This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

3 3433 07595875 5

SLN

Cooper

A

REPORT OF THE TRIAL

OF

COOPER *v.* WAKLEY,

FOR AN ALLEGED LIBEL,

Taken by Short-hand Writers employed expressly for the Occasion;

WITH AN

ENGRAVING OF THE INSTRUMENTS,

AND

The Position of the Patient.

TOGETHER WITH

MR. B. COOPER'S "PREFATORY REMARKS" ON THE EVIDENCE,

AND

A COPIOUS EXPLANATORY APPENDIX.

BY

THOMAS WAKLEY,

SURGEON,

AND

EDITOR OF THE LANCET.

I am no enemy to the Periodical Press, far from it; though I have never flattered it, and will never court it: but this I will say, the example of this proceeding has given it a triumph and an influence which it never had before.—*Sir James Scarlett's Speech.*

I think he is already a very good surgeon; but I do not think he is a *perfectly good* surgeon..... But, give him time; do not crush him at the *outset* of his career.—*Sir Astley Cooper's Evidence*, 13th December, 1828.

Mr. Bransby Cooper was elected surgeon on the 4th of May, 1825.—*Mr. Harrison's Evidence.*

LONDON:

PUBLISHED AT THE OFFICE OF THE LANCET, No. 210, STRAND.

1829.

2. Medicine — Surgery — Cases
3 Anatomy

Explanation of Technical Terms used in the course of the Trial.

Abdomen; the belly.
Abdominal parietes; the walls of the abdomen.
Cellular tissue, membrane, substance, "all the same thing;" the connecting medium of the various parts of the body.
Calculus; the name given to the stone found in the bladder.
Coccygis os; the bone immediately behind the anus.
Ecchymosis; extravasated blood, generally occasioned by a bruise or blow.
Encysted; contained in a sac or bag.
Integuments; the common skin.
Pelvis; the bony cavity which contains the bladder, rectum, &c.
Perineum; the space between the anus and scrotum.
Prostate; a gland situated at the neck of the bladder.
Peritoneum; a membrane which invests nearly the whole of the organs situated in the abdomen.
Subclavian artery; a vessel which passes under the collar-bone.
Triangular ligament; the substance which confines the neck of the bladder to the arch of the pubes.
Tuberosity of the ischium; the portion of bone on which we rest while sitting.
Urethra; the canal through which the urine escapes from the bladder.
Umbilicus; the navel.

INSTRUMENTS.

The Sound; Straight Staff; Curved Staff; Knife; Straight Forceps; Curved Forceps; Scoop; Cutting Gorget; Blunt Gorget. "Uncle's Knife," a drawing of this instrument is not given, as it only differs from the knife represented in the engraving in having a probe-point.

THE NEW YORK PUBLIC LIBRARY
166014B
ASTOR, LENOX AND TILDEN FOUNDATIONS

CONTENTS.

	PAGE
Argument on right of opening	8
Defendant's opening statement	14
Defendant's Witnesses.	
Mr. Alderman Partridge	17
John Clapham	25
Joachim Gilbert	29
John Thomas	33
Geoffry Pearl	35
James Lambert	42
Alexander Lee	54
Thomas Bolton	58
Benjamin Harrison	60
Alderman Partridge, recalled	65
Lambert, recalled	67
Sir James Scarlett's statement	68
Plaintiff's Witnesses.	
Mr. Thomas Callaway	95
Charles Aston Key	104
Joseph Laundy	110
Dr. Hodgkin	111
Mr. Benjamin Brodie	113
Benjamin Travers	114
Joseph Green	116
Dr. Babington	117
Roget	118
Mr. John Morgan	119
John Hilton	*ib.*
Sir Astley Cooper	*ib.*
Mr. William Dalrymple	123
John Watson	124
Defendant's reply	125
The Charge	138
Bats, Rats, and Barristers	146

APPENDIX.

Strictures on Sir James Scarlett's address	147
Mr. B. Cooper's "Prefatory Remarks" on the evidence, attached to his own report of the trial	155
Mr. B. Cooper's "*anticipations*," and *his own report* of the *post-mortem* examination	157—9
Remarks on the situation of the stone, and the two supposed difficulties	160
Remarks on the extraordinary evidence of Sir Astley Cooper	161—6
Mr. Carpue's account of Franco's operation "en deux tems"	162
Mr. Lizars on the operation "en deux tems"	164

ERRATUM.

Page 68, line 41, *for* "interest," *read* "influence."

London:—Mills, Jowett, and Mills, Bolt-court, Fleet-street.

IN THE COURT OF KING's BENCH, WESTMINSTER,

Friday, December 12, 1828,

BEFORE LORD TENTERDEN AND A SPECIAL JURY.

COOPER *versus* WAKLEY.

Counsel for the Plaintiff,—SIR JAMES SCARLETT, MR. F. POLLOCK, MR. PLATT, and MR. SCARLETT.

Solicitors,—MESSRS. PATERSON and PEILE.

Counsel for the Defendant,—MR. BROUGHAM and MR. F. KELLY; but the Defendant having made his election to address the Jury in his own behalf, these Gentlemen, from the etiquette observed at the Bar, and by a rule of the Court, were prevented from taking any part in the Proceedings of either day.

Solicitors,—MESSRS. FAIRTHORNE and LOFTY.

THE extraordinary circumstances which attended this trial, combined to render it one of the deepest interest both to the members of the medical profession and to the public. The alleged libels were published by the defendant in March last. The first was a report of an operation of lithotomy performed by the plaintiff at Guy's Hospital; and the second, "remarks" on that report, in a leading article of THE LANCET. As the defendant had not only pleaded a JUSTIFICATION, but had also determined to conduct his own defence in person, the trial produced a very unusual degree of public excitement. By eight o'clock on the morning of the trial, the different avenues leading into the court were so crowded that there was scarcely any possibility of forcing a passage. It was with the utmost difficulty, with the most active assistance of constables and the officers of the court, that counsel, jury, and witnesses could obtain an entrance. When they reached their seats, many of them presented a most ludicrous appearance; some of the wigs of the barristers were off, others half off; some gentlemen had parts of their coats torn entirely away, and large rents were made in those of others. Almost every hospital surgeon and eminent practitioner in London was present, besides an immense number of students. The defendant appeared on the floor of the Court at a few minutes past nine; Mr. Brougham and Mr. Kelly, his counsel, were also present. Sir James Scarlett, Mr. F. Pollock, Mr. Scarlett, and Mr. Platt, were counsel for the plaintiff. It was a quarter to ten o'clock before the jurymen could gain admittance.

The jury was special; but as not more than five or six entered the box upon

being called, Sir James Scarlett, with apparently great reluctance, prayed a tales. Those who entered the box were the following:—Huntley Bacon, Thomas Henry, Henry Laing, G. M. Bocher, J. Westmorland, Richard Prance, Edward Burn, Burridge Davenport, John Henry Hanson, and Dunton M'Laughlan, Esquires, and Messrs. J. Thomas and J. Wheeler. It was nearly half-past ten before they were sworn, in consequence of the difficulty of their reaching the box from the dense mass of people through which they had to struggle.

The defendant laid on the floor a cast of a child in the position in which a patient is tied when undergoing the operation of lithotomy. He had also a pelvis and case of instruments, such as were used on the occasion. He applied to the Judge to be accommodated with a table; but his Lordship stated that, in consequence of the pressure at the doors, it was impossible for him to have his wish complied with then, but one was brought to him afterwards.

MR. SCARLETT opened the pleadings. The declaration set forth the alleged libels which were published in Numbers 239 and 240 of "THE LANCET," of which the following is a copy:—

"GUY'S HOSPITAL.

"THE OPERATION OF LITHOTOMY, BY MR. BRANSBY COOPER, WHICH LASTED NEARLY ONE HOUR!!*

"WE should be guilty of injustice towards the singularly-gifted operator, as well as to our numerous readers, if we were to omit 'a full, true, and particular' account of this case. It will, doubtless, be useful to the country 'draff,' to learn how things are managed by one of the privileged order—a hospital surgeon—a nephew and surgeon, and surgeon because he is 'nephew.'

"The performance of this tragedy was nearly as follows:—

"ACT 1. The patient† (a labouring man from the county of Sussex, thick set, ruddy, and healthy in appearance, and 53 years of age) was placed on the operating table, at a few minutes past one o'clock, on Tuesday the 13th. The only one of the surgical staff present, besides the operator, was Mr. Callaway. The ceremony of binding the patient we need not detail; the straight staff was introduced, and was held by Mr. Callaway. The first incision, through the integuments, appeared to be freely and fairly made; and after a *little* dissection, the point of the knife was fixed (apparently) in the groove of the staff, which was now taken hold of, and the knife carried onwards *somewhere*. A small quantity of fluid followed the withdrawal of the knife; the forceps were now handed over, and for some time attempted to be introduced, but without effect. 'I must enlarge the opening,' said the operator, 'give me my uncle's knife;' this instrument was given, and a cut was made with it, without the staff being re-introduced. The forceps were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance, and with no small degree of force. 'It 's a very deep perineum,' exclaimed the operator,—'I *can't reach the bladder with my finger.*'

"ACT 2. The staff re-introduced, and a cutting gorget passed along it; various forceps employed; a blunt gorget—a scoop—sounds and staves introduced at the opening in the perineum. 'I really can't conceive the difficulty—Hush! hush! Don't you hear the stone! Dodd,' turning to the demonstrator, 'have you a long finger? Give me another instrument—now I have it! Good God! I can hear the stone when I pass the sound from the opening, but the forceps won't touch it—O dear, O dear!'

"Such were the hurried exclamations of the operator. Every now and then there was

* "The following passage occurs in John Bell's great work on surgery: '*Long and murderous operations, where the surgeon labours for an hour in extracting the stone, to the inevitable destruction of the patient.*'"

† "The poor fellow, who has left a wife and six children, said, that he 'came to town to be operated upon by the "*Nevey*" of the great Sir Astley.'"

a cry of, 'Hush!' which was succeeded by the stillness of death, broken only by the horrible squash, squash, of the forceps in the perineum. 'Oh! let it go;—pray, let it keep in!' was the constant cry of the poor man.

"This act lasted upwards of half an hour; the former upwards of twenty minutes. The stone was eventually laid hold of, and never shall we forget the triumphant manner in which the Assistant Surgeon raised his arm and flourished the forceps over his head, with the stone in their grasp. The operator turned to the students, and said, 'I really can't conceive the cause of the difficulty.' The patient being upon the table, bound, while the operator was '*explaining*.'

"The man was put to bed much exhausted, but rallied a few hours afterwards, and leeches were applied, in consequence of tenderness of the abdomen. He passed a restless night, was in great pain, and was bled from the arm on the following morning. Leeches were applied in the afternoon;—and about seven o'clock in the evening, death ended the poor fellow's sufferings, about twenty-nine hours after the operation.

"EXAMINATION OF THE BODY.

"There was a very large and sloughy wound observable in the perineum, and the scrotum was exceedingly dark coloured, from ecchymosis. The finger could be passed to the prostate without difficulty, which was not deeply situated; indeed, it was the declared opinion of Dr. Hodgkin and Mr. Key, that the man *had not 'a deep perineum.'* The cellular tissue throughout the pelvis was easily lacerable, and this was especially the case with the portion between the bladder and the rectum, admitting of the passage of the finger with great facility, and to a considerable distance. There was a tolerably fair lateral section of the prostate and neck of the bladder. The gland itself was larger than natural, and the portion which is designated the third lobe, presented a singular appearance, being of the size of the tip of the little finger, and forming a kind of valve at the neck of the bladder; part of this third lobe had a dark-coloured appearance, and it seemed as if some substance had been resting upon it. The bladder itself presented nothing remarkable.

"The peritoneum lining the abdominal parietes was highly vascular, and there was a slight quantity of turbid serum in the cavity of the abdomen. The kidneys had a mottled appearance throughout their cortical substance.

"There are two or three points in this case to which we beg particular attention; first, the statement of Mr. B. COOPER, at the time of the operation, that he '*could not reach the bladder with his finger*,' as contrasted with the fact of the bladder being very readily reached in the post-mortem examination; the man not having a deep perineum. Secondly, the circumstance of the finger passing with facility, between the bladder and rectum to a great depth, as considered in connexion with another declaration of Mr. COOPER, that he could not feel the stone with the forceps, until the time of its extraction, although a sound, passed into the bladder downwards, from the penis, struck upon the stone; as was the case also, on one or two occasions, when a staff was passed at the perineal opening.

"The surface of the calculus was rather larger than the disc of a shilling, flat, oval-shaped, and apparently consisting of lithic acid."

"OUR report of the operation of lithotomy at Guy's Hospital, in which Mr. BRANSBY COOPER, after employing a variety of different instruments, extracted the stone at the end of fifty-five minutes,—the average *maximum* of time in which this operation is performed by skilful surgeons being about six minutes;* has, as might have been expected, excited no ordinary sensation in the minds of the public, as well as among the operator's professional brethren. An attempt has been made to call in question the accuracy of our report, in a letter signed by a number of the dressers and pupils of the Borough Hospitals, which letter has been inserted, as an advertisement, in *The Times*, and also in the *Morning Herald*. Some of the young gentlemen who have affixed their signatures to this letter, were present at the operation; others, who were *not* present at the operation, have nevertheless, with a generosity more characteristic of their age than of their discretion, added the weight of their testimony to that of the eye-witnesses of the melancholy exhibition, and volunteered their approbation of Mr. BRANSBY COOPER's performance. Upon the value of this species of testimony we shall make no comment, nor do we think it material that the document to which we allude is signed, we believe, by not more than *one-third* of the

* "We have frequently seen the operation performed by the senior surgeon of Guy's Hospital in less than one minute!"

number of young gentlemen present; had they all signed it, their united op of the skill, dexterity, and self-possession, exhibited by Mr. BRANSBY COOPER on occasion, is not likely to influence the judgment of the profession, whatever it effect with the public. The question to which the manner in which the late c tion was performed is calculated to give rise, is not a question between Mr. BR/ COOPER and his pupils, but it is a question between a surgeon, holding a high responsible situation in Guy's Hospital, and the public. Of Mr. BRANSBY COO amenity of manners, and kindness of disposition, we entertain no doubt; and the in question may be regarded as a testimonial of the estimation in which a natured lecturer is held by the young gentlemen who attend his class. But the tion is not, whether Mr. BRANSBY COOPER is popular among his pupils, but wl he performed the late operation with that degree of skill, which the public has a to expect from a surgeon of Guy's Hospital; whether, in short, the case pres such difficulties as no degree of skill could have surmounted in less time, o less disastrous consequences; or whether the unfortunate patient lost his life, n cause his case was really one of extraordinary difficulty, but because it was the tu surgeon to operate, who is indebted for his elevation to the influence of a corrup tem, and who, whatever may be his private virtues, would never have been place situation of such deep responsibility as that which he now occupies, had he not the nephew of Sir Astley Cooper. This is the question, the only question, in whic public is interested; and if Mr. BRANSBY COOPER is desirous of bringing this qu to an issue in a court of justice, it will be for Mr. Harrison, the treasurer of Hospital, to enlighten the minds of the jury as to the circumstances under whic nephew of Sir Astley Cooper was elevated to his present situation. In the of an action, we shall most unquestionably call upon Mr. Harrison to *disclose* circumstances to the jury. In the mean time, we do not anticipate the de of this question by positively impugning Mr. BRANSBY COOPER'S skill; but we con as we have repeatedly contended on former occasions, that the inevitable tende making the patronage of hospital surgeoncies an affair of family influence, jo and intrigue, is to occasion a cruel and wanton augmentation of human suffering to render frequent such heart-rending spectacles as that which was lately exhibi Guy's Hospital.

"We repeat, that there may, by possibility, have been difficulties in this case, no degree of surgical skill could have surmounted in less time, or with greater al than Mr. BRANSBY COOPER exhibited; and it remains to be seen, whether such culties can be shown to have existed. At present, not a single material fact i report is denied, though its general accuracy is vaguely questioned by the oper pupils. It is not denied that nearly one hour elapsed before Mr. BRANSBY COOPE tracted the stone. It is not denied that the operator had recourse to the multi of instruments enumerated in our report. It is not denied that the patient wa jected to extraordinary suffering—suffering which could scarcely fail to termin death; but no attempt has been made to show that this was a case of extraord difficulty. It is scarcely worth while to allude seriously to the document whic been put forth by Mr. BRANSBY COOPER'S select pupils. But as these are the on negyrists the operator has hitherto procured, we will put a case, which may e the public to estimate the value of their approbation. Suppose it had been stated instead of employing fifty-five minutes in extracting the stone, Mr. BRANSBY C had performed the operation in the usual time—say four or five minutes. Supp had been stated that, instead of manifesting great perplexity and embarrassment BRANSBY COOPER had exhibited the utmost coolness and self-possession; th patient appeared to suffer very slightly during the operation, and was re from the theatre with every prospect of a favourable issue to the case. Let us su these, and similar *false* representations to have been made in this Journal; and w ask whether any of these young gentlemen, friendly as their feelings are tow teacher, whose good-nature is matter of greater notoriety than his science, and inte as they are in obtaining his good-will, and his certificates to enable them to pass examinations at the College before his 'uncle,' who is the president of that beni body;—we will ask whether any of these young gentlemen, some of whom did more than ONE-THIRD of whom did *not* see the operation, would have come forw contradict a favourable, though a false, report. We repeat that we do not, as th stands at present, directly and positively, impugn Mr. BRANSBY COOPER'S surgical but, as none of the material facts detailed in our report have been, or, we believ be, contradicted; we do not hesitate to say, that, looking to the circumstances atte this and other operations performed by this gentleman; in connexion with th cumstances—we believe that we are justified, and that Mr. Harrison, the treasur Guy's Hospital, knows we are justified, in saying, the *extraordinary* circumst

attending his elevation to his present situation, justice, humanity, the interests of the medical profession, and the safety of the public at large, call alike for investigation. Whether this investigation be of a judicial character or not, we are indifferent. We are prepared to meet Mr. BRANSBY COOPER, if he think fit, in a court of justice; we will meet him in our own person, (for this will not be a case to intrust to a lawyer, however eminent or highly-gifted,) and we shall see whether Mr. BRANSBY COOPER will be equally prepared to meet us, the public, the relatives of the unfortunate patient, and Mr. Harrison, the governor of Guy's Hospital.

The damages were laid at 2000*l*. The defendant had justified, and the following were his pleas of justification:—

1st PLEA.—And as to the composing, writing, and publishing respectively, and causing to be composed, written, and published, the said supposed libellous matters in the said first, second, third, and fourth counts mentioned, the said defendant, by leave, &c. saith, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he saith, that before the composing, writing, or publishing the said supposed libellous matters in the introductory part of this plea mentioned, or either of them, to wit, on the 18th day of March, A. D. 1828, in the county aforesaid, the said person in the said declaration in that behalf mentioned, to wit, one Stephen Pollard, was a patient at the said hospital called Guy's Hospital, in the said declaration mentioned; and the said plaintiff, then and there being such surgeon to the said hospital aforesaid, did then and there perform a certain surgical operation, to wit, the operation of lithotomy, upon the said Stephen Pollard, who was placed on the operating table at the said hospital for the purpose of the said operation, at a certain time, to wit, at a few minutes past one o'clock, on the day and year last aforesaid; and that the only one of the surgical staff who was then present besides the operator was the said Mr. Callaway, and that the straight staff was introduced and held by Mr. Callaway. That on the performance of the said operation by the said plaintiff, the first incision through the integuments appeared to have been freely and fairly made, and that after a little dissection the point of the knife was fixed (apparently in the groove of the staff), which was then taken hold of, and the knife carried onwards somewhere; that a small quantity of fluid followed the withdrawal of the knife; that the forceps were then handed over, and for some time attempted to be introduced, but without effect. That the said plaintiff being such operator, thereupon then and there said, "I must enlarge the opening, give me my uncle's knife;" that the said knife was given, and a cut was made with it without the staff being re-introduced; that the forceps were again used, but as unsuccessfully as before, that they were pushed onwards to a considerable distance, and with no small degree of force; that the said plaintiff, being such operator thereupon, then and there said, "It is a very deep perineum; I can't reach the bladder with my finger." That in the further performance of the said operation by the said plaintiff the staff was re-introduced, and a cutting gorget passed along it; that various forceps were employed; that a blunt gorget, a scoop, sounds, and staves were introduced at the opening in the perineum; that the said plaintiff thereupon then and there said, "I really can't conceive the difficulty—hush! hush! don't you hear the stone!" That the said plaintiff thereupon then and there in a hurried manner, turning to one Dodd, being the demonstrator on the occasion aforesaid, said, "Dodd, have you a long finger? Give me another instrument—Now I have it! Good God! I can hear the stone when I pass the sound from the opening, but the forceps won't touch it." That every now and then there was a cry of hush! which was succeeded by the stillness of death, broken only by the horrible squash! squash! of the forceps in the perineum. That the said Stephen Pollard constantly cried out, "Oh, let it go! pray, let it keep in!" That the performance of the said operation by the said plaintiff hereinbefore mentioned occupied a long space of time, to wit, a space of time exceeding fifty minutes; and that the stone was eventually laid hold of. That the said plaintiff being such operator thereupon, then and there turned to the students and said, "I really cannot conceive the cause of the difficulty." That the said patient was upon the table, bound, whilst the said operator was "explaining." That the said patient was put to bed much exhausted, but rallied in a few hours afterwards; that leeches were applied in consequence of the tenderness of the abdomen; that he passed a restless night, was in great pain, and was bled from the arm on the following morning; that leeches were applied in the afternoon; and that about seven o'clock in the evening death ended the said patient's sufferings, about twenty-nine

hours after the said operation. That an examination of the body of the said patient then and there took place: that there was a large sloughy wound observable in the perineum, and that the scrotum was exceedingly dark coloured from ecchymosis. That the finger could be passed to the prostate without difficulty, which was not deeply situated: that it was the declared opinion of Dr. Hodgkin and Mr. Key that the man had not a deep perineum; and the said defendant says, that the whole of the cellular tissue throughout the pelvis was easily lacerable, and that this was especially the case with the portion between the bladder and rectum, admitting of the passage of the finger with great facility, and to a considerable distance. The said defendant says, that there was a tolerably fair lateral section of the prostate and neck of the bladder; that the gland itself was larger than natural, and that the portion which is designated the third lobe presented a singular appearance, being of the size of the tip of the little finger, and forming a kind of valve at the neck of the bladder; that part of this third lobe had a dark-coloured appearance, and it seemed as if some substance had been resting upon it; that the bladder itself presented nothing remarkable: that the peritoneum lining the abdominal parietes was highly vascular, and that there was a slight quantity of turbid serum in the cavity of the abdomen; that the kidneys had a mottled appearance throughout their cortical substance. And although the said plaintiff, during the operation aforesaid, then and there stated that he could not reach the bladder with his finger, yet the said defendant says that the bladder was very readily reached in the post-mortem examination, the said patient not having a deep perineum; although the said plaintiff, upon the operation aforesaid, said that he could not feel the stone with the forceps until the time of its extraction, although a sound passed into the bladder downwards from the penis struck upon the stone, as was the case also on one or two occasions when the staff was passed at the perineal opening; yet the said defendant says, that upon the post-mortem examination aforesaid a finger was passed with facility between the bladder and the rectum to a great depth. And the said defendant further saith, that the surface of the calculus was rather larger than the disc of a shilling, flat, oval-shaped, and apparently consisting of lithic acid. And the said defendant saith, that the following passage does occur in John Bell's great work on Surgery:—"Long and murderous operations, where the surgeon labours for an hour in extracting the stone, to the inevitable destruction of the patient." Wherefore the said defendant, at the said several times in the first, second, third, and fourth counts mentioned, published the said several supposed libellous matters therein mentioned, as he lawfully might for the cause aforesaid.

2d PLEA.—As to the publishing of the said supposed libellous matters in the said last count mentioned, the said defendant, by like leave of the Court, here says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that before the time of the publishing of the said last-mentioned libellous matters, as in the said last count mentioned, to wit, on the day and year in the said second plea first mentioned, to wit, in the county aforesaid, the said plaintiff being such surgeon as aforesaid, had performed the said operation of lithotomy in the said second plea mentioned, and did therein employ a variety of different instruments, and did not extract the stone until the end of fifty-five minutes, the average maximum of time in which such operation is performed by skilful surgeons being about six minutes: and that the said operation was a melancholy exhibition, and was performed by the said plaintiff without proper and sufficient skill, dexterity, and self-possession; and that the said plaintiff did not perform the said operation with that degree of skill which the public has a right to expect from a surgeon of Guy's Hospital: that the said case did not present such difficulties as no degree of skill could have surmounted in less time, or with less disastrous consequences: and that the said patient lost his life, not because his case was really one of extraordinary difficulty, but because the said plaintiff performed the said operation upon him as aforesaid. And the said defendant further saith, that the said plaintiff was, and is indebted for his elevation to the situation of surgeon to Guy's Hospital as aforesaid, to the influence of a corrupt system; and that whatever may have been his private virtues, the said plaintiff would never have been placed in his said situation had he not been the nephew of Sir Astley Cooper. And the said defendant further saith, that the inevitable tendency of making the patronage of hospital surgeoncies an affair of family interest, jobbing, and intrigue, is to occasion a cruel and wanton augmentation of human suffering, and to render frequent such heart-rending spectacles as that which was exhibited by the said operation as aforesaid. Wherefore the said defendant afterwards, to wit, at the said time in the said last count mentioned, published the said supposed libellous matters therein mentioned, as he lawfully might for the causes aforesaid.

3d PLEA.—As to the publishing of so much of the said supposed libellous matters in the said declaration mentioned, as impute to the said plaintiff unskilfulness as a surgeon in the performance of the said supposed operation therein mentioned, the said

defendant, by leave of the Court, here says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that before the time of the publishing the said last-mentioned libellous matters, or any or either of them, to wit, on the day and year in the said second plea first mentioned, in the county aforesaid, the said plaintiff performed the said operation of lithotomy in the said second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause, have incurred; and that it was and is doubtful and questionable whether or not the death of the said patient was caused by such unskilfulness as aforesaid, and whether, if due and proper skill had been used in the said operation, the life of the said patient would not have been saved. Wherefore the said defendant afterwards, to wit, at the said times in the said declaration mentioned, in the county aforesaid, did publish, and cause to be published, the said supposed libellous matters, of and concerning the said plaintiff in the introductory part of this plea mentioned, as he lawfully might for the cause aforesaid.

4th PLEA.—As to the publishing of so much of the said libellous matters as in the introductory part of the said last plea mentioned, as impute to the said plaintiff unskilfulness as a surgeon in the performance of the said supposed operation therein mentioned, the said defendant, by like leave of the Court, here says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that before the time of the publishing the said last-mentioned libellous matters, or any or either of them, to wit, on the day and year in the said second plea first mentioned, in the county aforesaid, the said plaintiff performed the said operation of lithotomy in the said second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause, have incurred. Wherefore the said defendant afterwards, to wit, at the said times in the said declaration mentioned, in the county aforesaid, did publish the said last-mentioned supposed libellous matters of and concerning the said plaintiff, as he lawfully might for the causes aforesaid.

5th PLEA.—As to so much of the said supposed libellous matters in the said fifth count mentioned and set forth, as purports and alleges that the said plaintiff was indebted for his elevation to his situation of surgeon to Guy's Hospital as aforesaid, to the influence of a corrupt system, and that whatever may have been his private virtues, he would never have been placed in a situation of such deep responsibility as that of the said office of surgeon, as last aforesaid, had he not been the nephew of Sir Astley Cooper, the said defendant, by like leave of the Court first had and obtained, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that the said plaintiff was appointed and elevated to the said office of surgeon to Guy's Hospital, without any competition between himself and other surgeons, and without any inquiry into the comparative qualifications for the said office of himself and other surgeons; and that the said plaintiff was so appointed as last aforesaid, not on account of the superior fitness of him the said plaintiff for the said office, but by and through the personal and private influence of the said Sir Astley Cooper so being the uncle of the said plaintiff as aforesaid.

6th PLEA.—As to the publishing of the said supposed libellous matters in the introductory part of the last plea mentioned, the said defendant, by like leave of the Court first had and obtained, says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that the said plaintiff was appointed to the said office of surgeon of Guy's Hospital without any due and sufficient inquiry into or proof of his fitness and qualifications for such office, and by and through the personal influence of the said Sir Astley Cooper so being the uncle of the said plaintiff as aforesaid.

7th PLEA.—As to the composing and writing, and causing to be composed, written, and published, the said several supposed libels and libellous matters in the said declaration mentioned, of and concerning the said plaintiff as such surgeon as aforesaid, the said defendant, by like leave, &c. saith, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that before and at the time of the composing, writing, and publishing, and causing to be published, the said supposed libels and libellous matters in the said declaration mentioned of and con-

cerning the said plaintiff as such surgeon as aforesaid, or either of them, to wit, on the 18th day of March, A. D. 1828, in the county aforesaid, the said hospital called Guy's Hospital, was and is a certain public hospital, instituted, erected, and endowed, for the purpose of receiving therein divers persons suffering under and afflicted with disease; and the said plaintiff, before and at the time of the composing, writing and publishing the said supposed libels and libellous matters by the said defendant, as in the said declaration mentioned, was and still is one of the surgeons to the said hospital, and had been elected by the Governors of the said hospital as such surgeon from the circumstance of his being a nephew of Sir Astley Cooper, Bart., and not from any superior qualifications, knowledge, or attainments on his part as a surgeon; and the said defendant further saith, that before and at the time of the committing the said supposed grievances, as in the said declaration mentioned, the said defendant was the editor of a certain periodical and critical work called "The Lancet," in which said work the said defendant had been used to insert and publish, from time to time, reports of cases and surgical operations which had been performed in the public hospitals of this kingdom by the respective surgeons thereof, for the information of medical and surgical practitioners and persons studying the science of medicine and surgery, and to the great advancement of medical and surgical knowledge; and the said defendant further saith, that before the committing of the said grievances the said Stephen Pollard had been admitted and received into the said hospital, that he might undergo the operation of lithotomy, the said plaintiff, being such surgeon to the said hospital as aforesaid, did, before the committing the said grievances, to wit, on the said 16th day of March, in the year aforesaid, at Westminster aforesaid, perform the said operation of lithotomy on the said Stephen Pollard, before and in the presence of divers, to wit, 200 students and other persons being there and then collected and assembled for the purpose of viewing the said operation on the said Stephen Pollard. And the said defendant further saith, that the said supposed libels and libellous matters in the said declaration mentioned were and are reports of what took place during the said operation, and on the post-mortem examination of the said Stephen Pollard, coupled with critical observations on the manner and want of skill in which the said plaintiff performed the said operation; and which said report was, before the committing of the said supposed grievances, to wit, on the day and year in the declaration mentioned, transmitted to the said plaintiff for insertion in the said work called "The Lancet." And the said defendant further says, that he, believing the said report and observations to be true, and to contain a fair, impartial, and correct representation of what took place during the said operation and the said post-mortem examination, and that the observations contained in such report were correct, and a fair critique on the manner and want of skill of the said plaintiff in performing the said operation, and not knowing the contrary thereof, did afterwards, to wit, at the said times when, and in the said declaration mentioned, at Westminster aforesaid, for the advancement of surgical knowledge and information, and without malice or ill-will towards the said plaintiff, insert, print, and publish, and cause and procure to be inserted in the said critical work called "The Lancet," the said supposed libels and libellous matters in the said declaration mentioned. And the said defendant further says, that the said supposed libels and libellous matters in the said declaration mentioned, contained and do contain a true, fair, and correct report in substance of what took place during the said operation, and the post-mortem examination aforesaid, and fair, pertinent, and critical remarks and observations of and concerning the said plaintiff, as such surgeon, and the manner in which he performed the said operation of lithotomy as aforesaid, to wit, at Westminster aforesaid: and this he, the said defendant, is ready to verify, &c. F. KELLY.

The question for the consideration of the jury would be, whether the evidence the defendant might call, substantiated these pleas; if it did, the verdict would have to be for him, if not, it would have to be for the plaintiff, and then they would have to consider what amount of damages should be given.

Sir James Scarlett and Mr. Wakley, the defendant, both rose at the same time, but the latter resumed his seat.

Sir James Scarlett then said—My Lord, some of the affirmative issues are thrown upon the plaintiff, who, I understand, this day intends to prove his own skill!

Lord Tenterden—Which of them?

Sir James Scarlett—I will state it to your Lordship:—"The plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner;"

It is the fourth plea, my Lord;—"and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause, have incurred." Now, I apprehend that these are in their nature negative pleas; and as this is an action to recover damages not limited, I apprehend the plaintiff has a clear right to begin.

Lord Tenterden—Let me find the passage.

Sir James Scarlett—It is the fourth plea, my Lord. The third plea is this: "That the said plaintiff performed the said operation of lithotomy in the said plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary."

Lord Tenterden—Is it the third or fourth plea?

Sir James Scarlett—I have read the fourth, my Lord.

Lord Tenterden—What is the particular passage in the fourth plea?

Sir James Scarlett—The fourth plea is this, "The said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner."

Lord Tenterden—That is the third plea.

Sir James Scarlett—Yes, my Lord, that is the third plea also. Now these are in their nature negative pleas: but none of the pleas are good pleas; and as this is an action for unlimited damages, I think you will say the plaintiff is to begin.

Lord Tenterden—"The said plaintiff performed the said operation of lithotomy in the second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary;"—This is an affirmative plea;—"being a much longer time than was necessary or proper, and than a skilful surgeon would have occupied on that behalf; and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner; and did then and there, by the said unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise, and but for that cause, have incurred; and that it was and is doubtful and questionable whether or not the death of the patient was caused by such unskilfulness as aforesaid." What does the defendant say?

Sir James Scarlett—My Lord, this is peculiarly a case in which the damages are unlimited.

Lord Tenterden—I do not understand you purpose to offer any special evidence. Indeed, until the issue is tried, the question of damages does not arise.

Sir James Scarlett—That is another thing; but if your Lordship will be so good as to cast your eye through the pleas, you will find there is not one of them against me.

Lord Tenterden—Here I cannot enter into the consideration of that. If they had been demurred to, that would have been another thing; or, if I were in your situation, I might have been of your opinion.

Mr. Pollock—From the question which occurred at Guildhall the other day, where the damages are either not so clear, or so certain, that the Court could refer it to the Master, if the affirmative be thrown on the defendant, he would be at liberty to begin; but where the plaintiff has a clear right to damages on the face of the declaration and pleas, I apprehend the plaintiff has a right to begin.

Mr. Wakley—My Lord, I have three cases before me, which, I believe, on being read to your Lordship, will entitle me to the opening; and I am happy to say, that in one of them I have Sir James Scarlett advocating the side which I stand upon at present.

Lord Tenterden—Well, never mind that. What are the cases?

Mr. Wakley—The first is Hodges *v.* Holden, in 3d Campbell's Report page 366. The declaration was "in the usual form, for breaking and entering plaintiff's closes, and, with horses and carriages, treading down the grass and subverting the soil, &c. The defendant pleaded as to coming with force of arms, and whatever else was against the peace of our Lord the King, *not guilty;* and as to the residue of the trespasses, a right of way; which was traversed by the replication, and thereupon issue was joined."

Lord Tenterden—The defendant was allowed to begin.

Mr. Wakley—He was, my Lord. The other is in 2d Starkie, page 518, and is the case of Jackson *v.* Hesketh—"Practice as to opening and replying of counsel in trespass." Trespass for breaking and entering the plaintiff's close. The plea ran thus: "And the said Thomas Hesketh, by T. U., his attorney, comes and defends the force and injury, when, &c.; and as to the force, and arms, and whatever is against the peace of our said Lord the King, saith, that he is not guilty, in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country."

Lord Tenterden—There was some other plea—a right of way, I think.

Mr. Wakley—Yes, my Lord, there was. "And for a further plea in this behalf, as to the breaking and entering the said closes of the said plaintiff; and with feet in walking, treading down, trampling upon, consuming, and spoiling the grass and corn of the said plaintiff there growing and being in the said close, &c.; and then proceeded to justify the alleged trespass, under a public right of way, upon which issues were joined."

Lord Tenterden—The defendant was allowed to begin?

Mr. Wakley—Yes, my Lord.

Lord Tenterden—Very well, that is sufficient for the purpose.

Mr. Wakley—My Lord, there is yet a case more strong, perhaps, than either of these two, in which the opinion of Mr. Justice Bayley was relied upon, who said that the question of damage did not arise until after the issue had been tried; and when these gentlemen state, that where the damages are certain the plaintiff has a right to begin, yet I beg to say it does not appear to me that there will be damages given in this case at all, and therefore I hope the practice of the Court will not now be reversed, and that I shall be allowed to commence, as in the cases I have already quoted. The other case is in Ryan and Moody, page 293, Bedell *v.* Russell. It was an action of assault and battery, and a plea of justification only; and, if your Lordship will permit me, I will read the observation of Chief Justice Best:—"But, for the authorities cited, I should certainly have thought that the onus of proving the damages sustained gave the plaintiff a right to begin; but as it is of the utmost consequence that the practice should be uniform, I shall consider myself bound by those cases, until the matter shall be settled in full Court." Now, I am informed, my Lord, that a full Court has not yet decided against the decisions laid down in these cases; and as I trust your Lordship will agree with Chief Justice Best, that it is of the utmost importance the practice of the Court should be uniform, I hope your Lordship will decide that I have a right to commence.

Sir James Scarlett—My Lord, the question I propose to your Lordship is, that upon these pleadings the affirmative issue is not of necessity cast upon the defendant. To that he has made no answer; he has only cited cases to show that the party is to begin, upon whom an affirmative issue is cast. Now, if this issue were taken in the literal sense, undoubtedly it would turn out that he is to prove want of skill; but there are a great many cases on which the question turns merely on the construction of language; whether a man is dead

or alive, for instance—Who is to prove it? But in all those cases the plaintiff ought not to be deprived of beginning where he has a right, if the case is of such a nature as that he may give evidence of the negative upon the issue. Now, here is a case in which the plaintiff complains of a general attack, not only an attack upon his skill, but a general attack. The defendant puts in issue, whether he did exhibit a competent skill in the operation alluded to, and also whether he is a man of competent skill; for some of the pleas go to state that he is not a man of competent skill, but holds his situation through a corrupt influence; therefore whether he has competent skill, and whether he performed the operation right, are both of them questions cast upon him to make out, who, by the course the defendant has taken, is compelled to give evidence, and who is called upon not only to give evidence upon that, but to give evidence of his general skill.

Lord Tenterden—Which part of the record contains a general denial of his skill? Is there any part of it that does that?

Sir James Scarlett—Yes, my Lord, almost the whole.

Lord Tenterden—Yes; by inference—by inference: but there is not a distinct allegation of that.

Sir James Scarlett—In order to ascertain this, your Lordship must run through the whole; but, however, he says the plaintiff was so appointed, not on account of his superior ability, but by and through the personal influence of the said Sir Astley Cooper.

Lord Tenterden—I think that an affirmative.

Sir James Scarlett—That, perhaps, may lie upon the defendant, and that I will give him; but, however, it is sufficient if I have the good fortune to have your Lordship with me on any part. Now, here again, in the second plea, he says, "that the said plaintiff did not perform the said operation with that degree of skill which the public has a right to expect from a surgeon of Guy's Hospital; that the said case did not present such difficulties as no degree of skill could have surmounted in less time, or with less disastrous consequences; and that the said patient lost his life, not because his case was really one of extraordinary difficulty, but because the said plaintiff performed the said operation upon him as aforesaid." It is a direct allegation: they are negative allegations throughout in their nature. In the cases cited, and the observations referred to of my Lord Chief Justice Best, his Lordship observes, that in the case of damages sustained by the plaintiff, more especially in unlimited damages, he thought the plaintiff ought to begin; but he mentions that where the affirmative was thrown on the defendant, he ought to begin. My Lord, there is no doubt that it is highly expedient the general rule applying to cases where damages are sought should be adhered to, that the party who seeks redress should begin, and not the party who enforces for the second time, under the most solemn form, his original calumny.

Lord Tenterden—You should direct your attention (*addressing the defendant*) to the particular point that Sir James Scarlett suggests, as one of the grounds at least on which he maintains he has a right to begin; and it is this, looking at these pleadings, he says, there are certain parts of them which it is incumbent on him to prove and confirm; now I wish you to direct your attention to them now, in order that you may do so with greater facility when you come to answer the observations. I would advise you to direct your attention to the particular parts on which Sir James Scarlett has relied. If you turn to your second plea of justification, there you will find you allege, "that the said operation was a melancholy exhibition, and was performed by the said plaintiff without proper and sufficient skill, dexterity, and self-possession; and that the said plaintiff did not perform the said operation with that

degree of skill which the public has a right to expect from a surgeon of Guy's Hospital; that the said case did not present such difficulties, as no degree of skill could have surmounted in less time, or with less disastrous consequences; and that the said patient lost his life, not because his case was really one of extraordinary difficulty, but because the said plaintiff performed the said operation upon him as aforesaid." Now that's one. Turn to your next, and there is a passage there you will find on which Sir James Scarlett relies; it is this:—" the said plaintiff performed the said operation of lithotomy in the said second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degreee of pain and suffering than he would otherwise and but for that cause have incurred; and that it was, and is doubtful and questionable, whether or not the death of the said patient was caused by such unskilfulness as aforesaid; and whether, if due and proper skill had been used in the said operation, the life of the said patient would not have been saved." Therefore the question is upon this, whether the death of the patient was caused by the unskilfulness of the plaintiff, and whether, if there had been due and proper skill used in the operation, the life of the patient would not have been saved. Then in the next plea you state:—" that the said plaintiff performed the said operation of lithotomy in the said second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary or proper, or than a skilful surgeon would have occupied in that behalf; and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise and but for that cause have incurred." Now Sir James Scarlett contends upon these issues, the affirmative is upon him to prove that the plaintiff did not perform the operation in an unskilful manner, and to prove that he did not perform it in an unsurgeon-like manner, nor occupied longer time than was necessary. Now I wish to direct your attention to that.

Mr. Wakley. In reply, my Lord, to the observations of Sir James Scarlett, I have only to say, that the plaintiff in his declaration has *not* stated that he is a scientific surgeon, nor has he stated that the operation was scientifically performed. He charges me with having published an account of a *supposed* operation, but I shall prove it was a *real* operation. If I had pleaded that it was not, and that I was *not guilty*, it would have been very different; but I charge the plaintiff distinctly with unskilfulness—hence I come here to prove his unskilfulness. If Sir James Scarlett can prove the reverse, probably there will be a different decision at the close of this case than what I expect. Upon these pleadings, I cannot conceive there is a question against my right to open the case, that can be tolerated, or for a moment entertained. I charge the plaintiff with unskilfulness; I plead no *general issue*, I plead a *justification* only; and consequently, it appears to me, if words have any meaning in the cases I have cited, that the affirmative in the whole of the issues lies clearly and distinctly with me. If it should be proved the operation was unskilfully performed, the plaintiff would be entitled to no damages, as he will have sustained no other than a deserved injury; if he has sustained injury, and his unskilfulness be proved, it is only an injury he ought to sustain from the unskilfulness he displayed.

Lord Tenterden. As the decision of this point may be hereafter cited as

an authority, and as I believe I now have the opportunity of consulting two of my learned brothers of the Court, I shall have their sanction before I decide it.

[*Lord Tenterden* now retired to consult with two of the other learned Judges, who were in an adjoining Court. His Lordship returned in about ten minutes, and expressed himself to the following effect]:—

I am of opinion, that the defendant in this case has a right to begin. The general rule has been established by many cases, that the party on whom the affirmative lies, is the party first to begin. That rule was established in many cases, in which unlimited damages were sought at the hands of the jury. I remember the case of Beddell *v.* Russell very well, which was a case of trespass, where the damages sought to be recovered were unlimited, and which would therefore be for the consideration of the jury, if the defendant had not proved his case. It has been said in this particular case, there is an affirmative incumbent on the plaintiff, and if that were so, that it would take the case out of the general rule, or rather bring it within another rule, the rule that the party to begin would be the plaintiff, provided there was any matter affirmative in these issues, and which the plaintiff was bound to prove: but upon reading them, it appears to me there is nothing to that effect. The plaintiff must be presumed to be skilful until the contrary is made out, for every party is to be presumed to be able to discharge his duty in his profession, whatever that may be, until the contrary is shown; no man is to be supposed to have misconducted himself, and therefore, until the contrary is made out, the plaintiff is to be presumed to have conducted himself properly: well then, when the defendant says that he employed a "much longer time than was necessary or proper, or than a skilful surgeon would have occupied," it appears to me, that the onus is on the defendant to make out that he did. When the defendant alleges that the plaintiff "performed the operation in an unskilful and unsurgeon-like manner," it is incumbent on the defendant to prove that the operation was performed in an unskilful and unsurgeon-like manner; so when he alleges, that "by such unskilfulness the said patient was caused a much greater degree of pain and suffering than would otherwise have been caused," it is incumbent on him to prove that. And so with respect to all the rest; and we need not go through all the other parts, for they appear to me to be all of the same nature. The view I take of it is, that it is incumbent on the defendant to make out the truth of these allegations by evidence on his part; and that until he has done that, the plaintiff is not called upon to give any evidence on the subject.

Sir James Scarlett. My Lord, I am very willing to acquiesce in this, as I am at all times in your Lordship's decision, whatever that decision may be; but there is one consequence that follows from this decision, and which I wish to lay before you now, in order to do justice to my client: suppose that happens that may happen, that this gentleman's case, if he attempts to make it, shall fall to pieces, I shall then take the liberty of insisting, on behalf of a gentleman who has been calumniated in the grossest manner, that his evidence may be heard; for the purpose of proving satisfactorily and fully that the operation was performed with the utmost possible skill under the circumstances; and I shall not be satisfied to leave this Court, appearing as I do on behalf of a gentleman of high honour and great reputation in his profession, to have it said, that because some particular part of a plea was not proved, therefore the defendant's case was not proved, and the plaintiff succeeded. No; when a man ventures to publish a libel, and then comes forward to justify it, surely the plaintiff ought to have an opportunity of bringing forward his evidence, in order to prove the calumny fastened upon him is removed, and which will not be the case, if the defendant, after having failed to make out his case, could say, you

shall not call witnesses to enable the jury to estimate the amount of damages. That 's the difficulty I feel, and the situation in which I find I am placed. Therefore I hope your Lordship will permit me, whatever may be the result of these pleas, to give my evidence in support of a character hitherto unattacked by any human being.

Lord Tenterden. It will not be proper for me to give any opinion now, as to what I shall allow to be done at any future period; all I have to do is, to state what I shall do now. I have given my own opinion upon the point now before me, and I intended to have added, that both my learned brothers in the adjoining Court, with whom I have consulted, concur with me in the judgment I have expressed.

Mr. Wakley. As this is a case of immense importance, my Lord, and as the evidence to be given will be of a very peculiar nature, I am under the painful necessity of requesting that the witnesses on both sides may be ordered to withdraw.

Sir James Scarlett. The witnesses who are to speak to facts, if the defendant insists upon it, must withdraw; but there are many here who are to give an opinion, and surely they are not to withdraw.

Lord Tenterden. They must remain.

Sir James Scarlett. The witnesses who are to speak to facts may withdraw, if it is insisted upon.

Lord Tenterden. Witnesses who are to give an opinion upon the facts must remain, but those who are to speak to facts must withdraw.

Sir James Scarlett. With respect to those who are to speak to the facts, I have no objection that mine should withdraw, provided the defendant's witnesses withdraw also.

Mr. Wakley. All the facts that are to be proved are described in the declaration, and if the witnesses are called to give an opinion upon them——

Lord Tenterden. No, no; but they will be to speak to the evidence. Persons merely to give an opinion upon the evidence, as matter of science and skill, must be allowed to stay; all persons who are to speak to facts, must withdraw.

Mr. Wakley. But with regard to *particular passages* in the pleadings, it may be said, assuming so and so to be correct, what is your opinion?

Lord Tenterden. No, no; that is not the way.

Mr. Wakley. Then I hope the witnesses will be directed to withdraw, who are to speak to facts.

Lord Tenterden. Yes, certainly; but those who are to give an opinion upon the facts must be allowed to remain. Whether there be any of that kind, I don't know.

Sir James Scarlett. I presume this don't apply to witnesses who are not to speak to the facts of the libel, but matters connected with it; such as the education, or competency, and so on, of the plaintiff.

Lord Tenterden. No, no; it don't apply to those on either side.

Sir James Scarlett. Well, now give me the names of those you wish to withdraw?

Mr. Wakley. No, I shall not; and as I am totally incapable of drawing the line of distinction, I will allow all to remain.

Sir James Scarlett. You will allow all to remain in Court?

Mr. Wakley. Yes.

Lord Tenterden. Very well.

Mr. Wakley. May it please your Lordship—Gentlemen of the Jury—You have already heard from the learned gentleman who has opened the pleadings,

that this is an action instituted against me, the Editor and Proprietor of THE LANCET, for an alleged libel upon the professional character of the plaintiff. It is stated that I have published a report of a *supposed* operation at Guy's Hospital, falsely and maliciously; and it is inferred from the declaration that no such operation was performed in that institution, and that what I have published, is nothing more nor less than a gratuitous calumny. Guy's Hospital, gentlemen, as you must be aware, is an institution of very great importance, not only as an institution of charity, but one from which it is expected that there should emanate the first principles of our profession, practised in the very best manner. There is attached to it an extensive medical school. There are lecturers, and a very large attendance of students. The practice which the students witness in the institution is necessarily adopted by them in the most distant parts of the kingdom. Hence it is of the utmost importance to the public welfare that the practice inculcated should be safe, and scientific, and that it should, in every respect, be calculated to promote the interests of the public, and alleviate, as far as it is possible, the sufferings and miseries of mankind. Guy's Hospital was founded solely by one individual, Thomas Guy, I think in the year 1723 or 1724, who, at that period, left to the institution a sum of money equivalent to 200,000*l.*; consequently, the revenue of the institution at the present time, from the vast increase in the value of property, must be immense. Of course, it is of much consequence that those funds should be appropriated in a proper manner, and that individuals of the greatest possible skill should be selected to fill its offices, both medical and surgical; and that it is not fair that the hospital should be conducted in any other way than is calculated to correspond with the intentions of its benevolent founder, and thus prove of the greatest benefit to the public. Mr. BRANSBY COOPER, the plaintiff, is one of the persons who has been elected to fill the office of surgeon at Guy's; and in the discharge of the duties of that office he performed the operation, an account of which I published in the 234th number of my Journal. It is right that I should state to you, that THE LANCET was first projected and published by me in 1823. I considered that by publishing the lectures that were delivered in *public* institutions—lectures which I deemed public property, because the individuals who delivered them were public servants—I thought it would be of immense consequence to place in contrast the theories delivered in the different lecture-rooms, and the practice adopted in the wards of the hospital. By so doing, the lecturers were stimulated to a better exercise of their duty, for their opinions were laid before the public, and scientific men had an opportunity of seeing what those opinions were, and at the same time, of seeing whether the practice adopted in the wards was a practice of skill and attention, or a practice of ignorance and inattention. The publication of lectures has given rise to a good deal of discussion in some other courts of law. The publication of hospital reports has also a great number of advocates, and many opponents. The great body of the profession and public are the advocates; of course the hospital surgeons, who have to endure the scrutiny of their experienced brethren, are exceedingly aggrieved, for now they dare not hack and destroy their patients, as was their former custom. In the discharge of my duty as a journalist, I am under the necessity of employing a great number of reporters: they are widely distributed,—they take notes of the cases as they are admitted into the various hospitals, and carefully describe all particulars connected with them. The reporters I have employed, as far as I have been capable of judging, have been men of honourable character, and they have executed their duties in a very honourable and accurate manner. The

reports sent to me I am compelled to rely upon, as all editors of journals are, for they themselves cannot be every where; it is impossible that I can be at Guy's, at St. Thomas's, at St. George's, and at other places, at the same time; therefore I am compelled to rely on reporters, and they transmit to me regularly from the various institutions accurate reports of the cases. The report of which the plaintiff complains was sent to me by a surgeon of very high character, a gentleman whom I shall call into the witness' box this day; he will avow himself to be the author, and will state to you further, that the report, in every respect, is correct. That gentleman will acknowledge, and will state this openly before the Court; and I challenge—I challenge my opponents to the most strict, to the most scrutinizing investigation of his character. I have heard, indeed, that attempts will be made to fasten some imputation on that young man; but I defy calumny, and I court scrutiny—however, you will be the best judges whether his evidence be entitled to credit or not. When this report was transmitted to me, as it was one of an extraordinary character, and as it referred to circumstances of a still more extraordinary character, I paused before I inserted it. I waited, and did not publish it in the first number after I received it, I waited till the period of publishing a second number arrived. When the report was brought to me, it certainly contained some statements against the operator rather more harsh than those that subsequently appeared in THE LANCET. The gentleman who wrote it, considered that it was his duty to characterise such an operation in the strongest terms of reproach; and, gentlemen, as he assured me on his honour before I gave currency to the report, that it was, in every respect, correct, I had no other course to pursue in my character of a journalist, whatever the consequences might be, than to present it to the public in the manner I have done, having first slightly altered a part of it, and introduced the phrase—"Nephew and surgeon, and surgeon because he is nephew." (*Laughter.*) I believe I introduced that, and that only. Gentlemen, I will not detain you longer, because I have no doubt I shall have an opportunity of addressing you again, and that my case will not "fall to pieces," as my learned opponent pretends to anticipate. I rather think he will have ample opportunity for producing all his witnesses, and of giving all the evidence he can as to this Mr. Bransby Cooper's scientific character; therefore, I may appease the learned gentleman's fears at once by assuring him, that I shall not flinch from my duty a single step. If it can be proved that this report, by possibility, was untrue, there is nothing would give me greater regret than to have published it, or to have done an injury to Mr. Bransby Cooper, or to any other person. It is not by false reports that we obtain the confidence, or impose on the profession: but when men come forward to sanction such things as have been complained of in this report, they give a stain to the character of the profession which ages cannot remove; if, unfortunately, there are surgeons of reputed talent who will come forward and *swear* that this operation was performed skilfully, I know not what they will refuse to swear; and you must presume that they are themselves unable to perform the operation in any other manner. With these few observations I shall leave the case, for the present, in your hands. I shall now call a number of witnesses to prove that this report is, in every respect, correct; and, of course, I shall be entitled to your verdict.

EXAMINATION OF THE WITNESSES.

Mr. Alderman Partridge sworn, and examined by Mr. Wakley.

Where do you reside, Sir? At Colchester.

Are you a member of the College of Surgeons? Yes.

You are in practice at Colchester? Yes.

How many years have you been in practice? Fourteen years or more.

Have you seen many operations of lithotomy? Yes, I have.

Have you performed the operation yourself? Yes, I have.

How many times? I never kept an account, but I should suppose about eighteen or twenty times; perhaps sixteen or eighteen times; I cannot say to one or two.

Did you witness an operation of lithotomy performed by Mr. Bransby Cooper? Yes.

Lord *Tenterden.* An operation at St. Bartholomew's?

Mr. *Wakley.* At Guy's, my Lord.

In March last? In March last.

Have you read a report of that operation in "The Lancet?" Yes, I have.

Is that report correct, Sir? It struck me at the time as being correct, and I have had no particular cause, as I am aware of, since to alter my mind about it. I did not examine it very thoroughly.

Can you point out any material inaccuracy in that report, Sir? Why, the report now *verbatim* has gone from my mind, but the general——

Did the patient appear to you a healthy man? He certainly struck me, when I went into the theatre, as a very healthy man. I made that remark at the time.

Of his years he appeared a fine healthy countryman? It struck me so.

Lord *Tenterden.* He says he appeared to be a very healthy man.

Mr. *Wakley.* Did Mr. Cooper or Mr. Callaway introduce the staff? I do not bear that in mind; I think Mr. Cooper did himself, but I will not be positive.

Was the staff, after the external incision had been made, withdrawn? All instruments were withdrawn immediately.

Was a second cut attempted to be made into the bladder without a new introduction of the staff? The first attempt was so certainly.

The first was so? The first was made without any director.

Lord *Tenterden.* All instruments were withdrawn after the first incision was made: is that what you say? Yes, my Lord.

Lord *Tenterden.* The second cut was attempted to be made.

Mr. *Wakley.* Was made.

Sir *James Scarlett.* The gentleman put the question *attempted* to be made.

Lord *Tenterden.* Did you say made, or was attempted to be made? Made, I believe. I speak of the first attempt here—the first effort after all instruments were withdrawn.

Mr. *Wakley.* Was this the position of the patient [*directing the attention of the witness to the cast of a child bound in the way in which a patient is tied when under the operation of lithotomy*] during the operation, or nearly so? More elevated.

The hands were tied to the feet? The hands were tied to the feet.

And the knees were tied to the neck in this way? Yes.

And in this position the patient remained nearly one hour?

Lord *Tenterden.* No; you are to ask how long he remained in that position.

Mr. *Wakley.* How long did the patient remain in this position? It must have been nearly an hour, from the notice I took of the clock in going in and coming out.

During that period was a sound repeatedly introduced? Yes.

Lord *Tenterden.* That's an instrument, is it?

Mr. *Wakley*. An instrument, my Lord. [*Mr. W. exhibited the instruments as he proceeded from a case on the table before him.*]

Several of these staves, or one of them? One, several times; I could not say exactly which.

Were several attempts made to enter the bladder with a knife of this description? Yes, certainly. I don't know whether it was exactly of that description.

Lord *Tenterden*. Several cuts were attempted to be made with a knife? Yes. Into the bladder? Yes.

Mr. *Wakley*. Into the bladder, my Lord. Was this instrument pushed through the wound—the cutting gorget?

Lord *Tenterden*. Name them, if you please.

Mr. *Wakley*. The cutting gorget, my Lord.

Sir *James Scarlett*. These are leading questions, but I shall make no objection to them just now.

Mr. *Wakley*. I will put the questions in any way you please.

Lord *Tenterden*. The proper form of question is to ask what was done.

Mr. *Wakley*. Was a cutting gorget introduced? Yes.

Was a blunt gorget introduced? Yes.

Lord *Tenterden*. Was it? Yes; that's what I said, my Lord.

Mr. *Wakley*. Was the scoop introduced? Yes.

And were several of these forceps introduced, or several pairs? I noticed two pair, straight and curved.

Mr. *Wakley*. The curved pair I have not here.

Lord *Tenterden*. You noticed the introduction of two pairs? Yes.

Sir *James Scarlett*. You don't mean at the same time, I suppose? No.

Mr. *Wakley*. One pair at a time is enough for a patient, Sir James.

Lord *Tenterden*. Now go on, if you please.

Mr. *Wakley*. Did the operator exhibit—at least did the patient exhibit great pain during the introduction of these instruments? He called out during the operation several times to desist, certainly.

Did he request to be loosened? He did to that effect; he requested the gentleman would leave off, Mr. Cooper would leave off, and desist altogether.

Did the operator declare he could not explain the difficulty? Yes.

Lord *Tenterden*. You should ask what was said.

Mr. *Wakley*. What did the operator say? During the operation?

Yes]? He declared more than once—once, certainly, and I think oftener, he could not explain the difficulty—he could not think what the difficulty was, I think, was the expression.

Did the operator appear hurried and confused?

Lord *Tenterden*. How did he appear? You appear to be a man of intelligence, and you must—you know how to put the questions as well as any body.

Mr. *Wakley*. How did he appear? Certainly he appeared to me to be perplexed.

A Juror. Speak out, Sir? He appeared to me to be hurried and perplexed in consequence of the long delay.

Mr. *Wakley*. Did he appear to act with any regular purpose? Why that——

Lord *Tenterden*. Answer the question, Sir. I shall do my best to answer it; put it again, if you please.

Mr. *Wakley*. Did he appear to act with any regular decision? Not with what I call a scientific decision, certainly.

Not? Not a scientific decision for extracting the stone.

Did he introduce his fingers with great force?

Lord *Tenterden*. Did he introduce his fingers, and how did he do it? If you should make it necessary for me to speak so often, I shall be under the necessity of asking you to put all your questions through me.

Mr. *Wakley*. I am very sorry to be troublesome to your Lordship, but I am totally ignorant of legal technicalities.

Lord *Tenterden*. No, no; I have told you, and *you* know what leading questions are as well as any man in court.

Witness. He exercised some force. I should suppose there was force sufficient

if he was not in the bladder, to divide the cellular membrane between the integuments and the bladder. It did not strike me as being *very* violent, but it was with considerable force.

Mr. *Wakley*. How did he use the instruments? What instruments—do you mean generally?

The whole of them? He used them in the ordinary way of cutting into the bladder to extract the stone. He introduced the forceps in the way that he thought most likely to catch the stone; he felt of course for a while, and tried most of the instruments as he supposed that would catch it.

Was there any force employed in using the forceps? I don't consider that he did introduce the forceps the first time; he attempted it, if you mean that.

What was his intention in introducing the forceps? The extraction of the stone, I suppose; that's what every other man would intend.

Did it appear that the gorget entered the bladder—at least, the forceps? Not the first time.

Not the first time? Certainly not.

From what cause? The impression on my mind at the moment was, that the opening was not large enough for the introduction of the forceps.

The opening into the bladder? The opening into the bladder was not large enough to admit them.

Was there any opening then at all? It struck me there was, because I saw an issue of watery matter, mixed with blood; a small quantity, it was not large, certainly.

Lord *Tenterden*. Did you see a small quantity of water and blood? Yes, my Lord.

Was that what you said or meant to say? Yes; that's what I meant to say.

Mr. *Wakley*. How did the fluid escape, with a gush, or in a gradual stream? Not a gush, a moderate stream; not with a large gush, as it often does.

Did he say that he could feel the stone with the staff when it was passed through the urethra? Yes, he did.

Lord *Tenterden*. When he passed the staff through the urethra he said he felt a stone? Yes, my Lord.

Mr. *Wakley*. Did he say that he could feel the stone in the bladder when he passed the sound through the wound in the perineum? Yes.

He felt a stone both ways? Yes.

Lord *Tenterden*. Well, he said so when he passed the what—through the perineum?

Mr. *Wakley*. The sound, my Lord.

Did he state at the same time, Sir, that he could not feel the stone with the forceps? Yes, immediately afterwards, when he introduced the forceps.

Lord *Tenterden*. He said he could not find the stone with the forceps.

Mr. *Wakley*. Feel it, my Lord.

Lord *Tenterden*. Could not feel it.

Mr. *Wakley*. Why, Sir, do you imagine—could he feel the stone with the sound through the perineum, and not feel it with the forceps? For this very reason, that the stone lay very high, and the forceps were straight, or slightly curved, consequently he passed under the stone as it lay high up on the pubes, or very high up in the bladder.

Lord *Tenterden*. The stone lay high, and the forceps were straight, or slightly curved, so that they would not reach it.

Mr. *Wakley*. Did Mr. Cooper repeatedly try to feel the stone with his finger? made many attempts? Yes.

Lord *Tenterden*. With his finger? Yes.

Mr. *Wakley*. Did he leave his seat, and measure fingers with a gentleman present to see if he had a long finger? Yes, he did; he either left his seat, or was standing and turned round to the party.

Lord *Tenterden*. He measured his finger with that of another gentleman? Yes, my Lord.

Mr. *Wakley*. Do you believe, taking all the circumstances into consideration, that Mr. Cooper performed the operation in a scientific manner? No; I could not say I thought he did, certainly.

Do you believe the operation was performed in a manner in which the public have a right to expect such an operation ought to be performed by a surgeon of Guy's Hospital?

Lord *Tenterden* He does not know the meaning of that,—*what the public have a right to expect!* Was it performed with proper skill? One hardly knows what the public have a right to expect.

Mr. *Wakley*. That is charged, my Lord.

Lord *Tenterden*. Yes, I believe it is,—I see it is. You have a right to put the question.

Mr. *Wakeley*. Do you think the operation was performed in a manner the public have a right to expect from a surgeon of Guy's Hospital? That operation?

That operation? No, I do not.

What has been the average time occupied in those operations of lithotomy you have seen? The average time I suppose to have been about five minutes, taking one with another; some more and some less.

The average time about five minutes? About four or five minutes: I think that is about the average time.

How long a period did this operation occupy? I thought it was nearly an hour, and I believe it was nearly an hour.

After the sound and the staff had been introduced, and after the first incision was made, Mr. Cooper withdrew the staff? He did not use that sort of staff; [*the staff Mr. W. then held in his hand;*] he used a straight staff.

He used a straight staff? I have not one with me? Yes, with a knife.

When the operator found he could not introduce the forceps on the first attempt, did he withdraw them and make another cut with his knife? Yes, surely; and made another cut with his knife.

Without instruments you mean; the staff not being introduced? Yes, surely.

Lord *Tenterden*. After failing to introduce the forceps the first time, he made another cut without the staff being then in.

Mr. *Wakley*. Did you ever see a similar thing done? I have seen a great many operations, but I never took any particular notice of that; it is not usual to do it.

Lord *Tenterden*. To do what? To make a cut without a director.

Mr. *Wakley*. For what purpose is this used in the operation? It is generally used—

Lord *Tenterden*. What is the name of it, Sir?

Mr. *Wakley*. Scoop, my Lord. (*Witness.*) I have always understood it was used to extract fragments of a stone that might be crumbled off in the extraction of it from the bladder.

Were there any fragments in this case? No—no, I think not; not that I ever saw.

Lord *Tenterden*. You saw no fragments? I saw no fragments, my Lord.

Mr. *Wakley*. What has been the longest time you have seen any other operation of lithotomy last? I am not aware that I ever saw the most difficult case last more than twenty minutes; or to be within the mark, twenty-five minutes or half an hour. I could not say to a few minutes.

Lord *Tenterden*. You are not aware that you have seen it half an hour? I think not, my Lord; I have no recollection of one.

Mr. *Wakley*. You have stated, Sir, that the average time of performing the operation is about five minutes? I think so; I believe that will be found to be about the average time.

You have also stated, that you have witnessed operations of lithotomy that have lasted from twenty to twenty-five minutes? Yes.

In those cases were there any evident causes why the operation should last so long? Undoubtedly.

What were those causes, Sir? The causes may have been many. I have seen it arising from the stone being large, and it would have been dangerous to have made the wound larger for fear of wounding the rectum; and the time has been taken up in extracting the stone gradually, perhaps for fear of tearing the parts; more to dilate than to tear.

Lord *Tenterden*. The danger of making the wound larger, that of injury to the rectum? Yes; for fear of injury to the rectum.

I think you said drawing out the stone very gradually? Yes.

Was to dilate, not to tear? Yes.

Mr. *Wakley*. Was it a large or a small stone in Mr. Cooper's case? The recollection I have in my mind of it is, that it was flat, somewhat triangular, and perhaps a little larger than a common Windsor bean, which, perhaps, might be considered a small stone.

Lord *Tenterden*. Flat, triangular, and somewhat larger than a common Windsor bean; is that what you mean? I have not it exactly in my mind.

That's what you said? Yes.

And you say that's not a large stone? That's a small stone, my Lord.

Mr. *Wakley*. About what weight should you suppose the stone to have been? Why they vary so much in their composition——

Lord *Tenterden*. Did you see it weighed? I did not, my Lord. I should say two drachms; about two drachms: not more than two drachms, certainly.

Mr. *Wakley*. Have stones, weighing several ounces, been successfully removed? Yes.

You stated, that the stone, you thought, was lodged high up? Yes: I did not think about that, for I was satisfied that it did.

Is not the pubes the superior part; the upper part when the operation is performed?

Lord *Tenterden*. I don't hear you.

Mr. *Wakley*. How can a stone be lodged above the pubes? It was lodged there, I suppose, in consequence of the bladder being lodged above it. The bladder rises of course, rises above it.

Lord *Tenterden*. The bladder, what? The natural situation of the bladder is above the pubes.

Lord *Tenterden*. I don't take your answer. I was satisfied that the stone lay high up, it was above the pubes; I have got so far. Now, in consequence of what? In consequence of the sound touching the stone on withdrawing it.

Mr. *Wakley*. Can any portion of the bladder be higher up than the pubes, if the bladder be empty? Yes, certainly it can be quite as high, and I think a little higher. Really, there are some anatomical questions I should be ashamed of if I did not answer properly.

That is the upper portion of it; the farthest portion of it, you mean? Certainly, the farthest part of it. I am not speaking of the neck of the bladder.

If the opening made into the bladder were not sufficiently large to admit the forceps, could the stone be laid hold of, without, at the same time, grasping the coats of the bladder? No, not without grasping the coats of the bladder; but I very much doubt whether you can get hold of it at all without getting into the bladder.

Whether low or not? Why if it was situated upon the rectum you might push in the forceps and get hold of it, bladder and all; but that would be a piece of violence I never witnessed, and never wish.

You will be particular, if you please, Sir, in your answers, for this is a part I wish to be clearly understood; you state that the stone was lodged above the pubes? That 's the impression on my mind.

Now, Sir, will you be so obliging as to state, what could retain it there if the bladder was empty, if the stone was not encysted, and if it was not attached to the bladder? I cannot tell you exactly what detained it there; but I am perfectly satisfied it was above, on this particular account, that the sound always touched it on withdrawal; and it was at last extracted by pressure above the pubes, and depression of the handle of the instrument, and the curve turned upwards.

Lord *Tenterden*. Extracted by what? Depression above the pubes, and using a curved pair of forceps.

External pressure, I suppose? External pressure, my Lord.

Mr. *Wakley*. A pair of curved forceps, pressure above the pubes, and depressing very much the handles.

Lord *Tenterden*. That's the handle of the forceps? Yes.

Mr. *Wakley*. Had the operator, do you consider, from the manner in which he used the forceps, any idea of the situation of the stone? Certainly not; if he had he would have exercised this precautionary measure at first.

Lord *Tenterden.* If the operator had been aware of the position of the stone, he would have done those things at first? At first, after getting into the bladder, my Lord.

Cross-examined by Sir James Scarlett.

Mr. Partridge, did you make the report to the Editor of "The Lancet?" No.

Have you attended any meetings since of Mr. Wakley and his witnesses? I saw the attorney last night, for the first time, at eight or nine o'clock.

Had your opinion ever been taken upon it before last night? Never: did you mean my opinion had ever been taken by Mr. Wakley?

Yes? Never; I never saw Mr. Wakley, before to-day.

A great many persons were present at this operation, were there not? Yes there were, of pupils; there were others, too.

Who was the assisting surgeon? Mr. Callaway.

Do you know Mr. Callaway? Very well.

Is he a man of skill? I always thought so, and I have no reason to think the contrary now.

Did you ever know, in the course of your practice before—ever recollect, any case where the stone was found to rest upon the pubes? I make use of that term because it laid very high. I have met with it three or four times myself, and I have invariably extracted the stone by depressing the handle of the forceps, and using pressure above the pubes; therefore, I conclude, it laid high up.

Exactly so; I am not questioning the grounds of your opinion. Pray, Mr. Partridge, allow me to ask you,—the first part of the operation, I believe, is to introduce the staff? Yes.

What you call the straight staff, is an instrument which Mr. Key uses very much? Yes, it is; it 's called Mr. Key's staff.

Do you know Mr. Key? No, I do not know him; I have not seen him since I left the Borough. I think I should not know him. I knew him when I was a pupil.

But you know him to be a man of reputation and skill? O yes.

The first operation is to introduce the staff, whether straight or crooked is not now material, through the urethra, through the prostate gland, and into the bladder? Yes.

Lord *Tenterden.* The first through the urethra? (Sir *James Scarlett.*) Yes, my Lord; which passes through the prostate gland, then into the bladder. (*Witness.*) Passes through the whole canal into the bladder.

The urethra passes through the prostate gland? Yes.

The staff has a groove in it? Yes, it has.

For the purpose of catching the knife that is inserted into it? Yes; the knife is made purposely to go along the groove; and some knives have a probe point, but I believe this one was used without a point.

Not the first knife? The first knife was used without a probe point; it has a long point to be carried along the groove.

I am not speaking of this operation? O, if you mean any operation——

Yes, the operation in general; the cut is made in the perineum with a knife? Yes.

With a knife, and the object is to get the point of the knife into the groove of the staff; is it not? Surely.

Just so: when the point of the knife is inserted in the groove of the staff, it has then penetrated the urethra in some part of it? Of course it must.

Lord *Tenterden.* Stop; when the knife gets to the staff, it must have cut some portion of the urethra? (Sir *James Scarlett.*) Yes; for the staff is in the urethra.

Then the staff is brought forward to become more parallel with the knife? Yes.

And then the staff is forced on to carry the knife into the bladder? The handle is depressed.

Yes; to bring it near the bladder? To bring it in a line with it.

Then the knife is run along the curve, when it must necessarily make a large incision through the urethra, and into the bladder? No; not necessarily.

Eh? It depends upon how you carry your knife, whether you make a large or small angle with the knife.

But the object is to make a larger incision into the bladder? Yes.

When that is done, is not the next operation to insert the finger? The next operation would be to withdraw your knife.

Well, of course it would; (*laughter*); thank you: the next operation would be to withdraw the knife and staff? No, not the staff; keep the staff in, and introduce your finger to ascertain the wound you have made.

To ascertain the wound you have made. Very well; if you ascertain that the wound is sufficient—I am not speaking of this operation now, nor of any particular one—if you ascertain that the wound is sufficient, and the finger is inserted into the bladder, you endeavour to feel the stone if you can? Yes; I believe many would be pleased if they could do it, but it's not always the case.

If you are so fortunate, then, as to feel it, you may direct the forceps along the finger and take hold of the stone with the end of the finger? Then you must have made a very large wound indeed, or have a very small pair of forceps, or else you could not get your finger and the forceps in at the same time.

Well; if you had occasion to make a larger incision, and the finger is in the bladder, what's the course then? Why, the course I should take, if I had got my staff in, would be to withdraw my finger, and introduce my knife again, and make a larger angle along the staff than I had done before.

Lord *Tenterden*. Make a larger angle? Make a larger angle, consequently a larger wound, my Lord.

Sir *James Scarlett*. Now, if the staff is withdrawn, would you know the urethra was cut with the knife? Yes.

Could you re-introduce the staff again, through the urethra, with safety? It's quite open; it's laid open all in one wound; I could not introduce it again; it's all in one wound.

But, Sir, just attend to me, and understand my question. Suppose the staff was withdrawn, after the urethra and bladder were cut, could the sound be introduced again through the urethra? There's no necessity, Sir.

But if there was a necessity, could it be introduced? You mean by beginning at the commencement of the penis.

Yes? You might do so, but it's quite useless.

If you did that, would there not be a chance of its coming out through the wound below? A straight one would, but not a curved one.

How could you be sure of that? I am only sure that the man who passed it could not be aware of what he was about, that's all I mean.

But you are of opinion, there is no occasion to re-introduce the staff through the urethra? Certainly not; not through the sound part of it.

After the cut is made, the staff operates as a sound? The straight staff will not do that.

Is not the use of the sound, after the incision is made, merely to do away with the use of the staff? No; certainly not.

What's the use of it then? I have before said; satisfy yourself whether the wound is large enough, and then withdraw it; you don't want three or four instruments in the bladder at the same time.

No, no; but suppose you want to sound again for the stone, would you introduce it through the urethra or perineal opening? Through the perineal opening, on your finger.

Whereabouts did you stand? When this operation was performed?

Yes? Why, I had a chair to sit immediately behind Mr. Cooper.

Very well; you sat behind him: did you know him? I never saw him before that day.

Now, Sir, I come to ask one or two more questions, and then I shall have done. I think you stated to my Lord you had no doubt the first incision was made into the bladder? I had no doubt, and have no doubt now.

Do you believe that any person of competent judgment who witnessed the operation could doubt that? As I cannot doubt it myself, I do not know how any body else can. (*Laughter.*)

That is sufficient. Do you believe that, in the first incision—I am only speaking of the first—the point of the knife did find its way into the groove of the staff? I have before said, I am convinced that it did.

Now, Sir, I am desired to ask you this question: you say you have read this report in "The Lancet?" Yes, Sir.

When did you read it last? I take the work weekly, and I read it every week as it comes.

Are you a correspondent of "The Lancet?" I told you, just now, that I never saw the Editor before, and I never corresponded with him.

It is no reproach to you if you had, as they are all men of talent that must correspond with him? You are very kind, Sir.

"The first incision through the integuments appeared to be freely and fairly made——" That it did.

Hear me out—"and, after a little dissection, the point of the knife was fixed apparently in the groove of the staff:"—Now, attend—"fixed apparently in the groove of the staff, which was now taken hold of, and the knife carried onwards *somewhere*." Now, look at that sentence, and tell me, upon your oath, as a medical man, as a surgical man, whether you do not believe that that was intended to convey a *doubt* whether the point of the knife did go into the staff and into the bladder at all? Now, look at that, and tell me the "somewhere," being in italics, whether the "somewhere" is not intended to convey to your mind, as a surgical man, that the knife did not reach the bladder at all? I am not aware of what his intention was.

No; *not aware*? I should have drawn an inference from it certainly.

That he meant you to understand it to have gone into the bladder? That it might, or it might not—that is better.

Yes; but the word "somewhere," being in italics? It might, or it might not.

Yes, to be sure; "somewhere" means somewhere, or any where? Yes.

Now, Sir, look at what follows: you are satisfied that the fluid that passed consisted partly of urine? I was satisfied then, and have not had cause to alter that opinion since.

Now, then—"a small quantity of fluid followed the withdrawal of the knife." Now, if in this report, the person who reported it had stated that to be urine, then the original doubt on your mind would have been removed from your mind? Yes, certainly; the first thing is, that the first rush of water out of the bladder is very satisfactory to every mind, I believe, that the bladder has been reached.

Now, you say that it was your opinion, at the moment, that the forceps did not reach the bladder? No; they did not.

That is your opinion? If they reached it they did not go in.

Well; they did not go into the bladder: do you think can any body be so good a judge of that as the operator himself? I do not know; it depends upon what sort of an operator he is.

I will take him to be as skilful a man as yourself. Supposing the case is doubtful to the by-standers, I ask, whether, in your judgment, he would not be the best judge? He ought to be; but he might be mistaken, when hurried.

Well, but I will suppose him to be as you say, whether he would not be the best judge? I should myself judge immediately from what issued.

Are you prepared to swear that the forceps were applied a second time, and pushed with considerable force? I have never stated that in my evidence.

No; but I ask you whether you will state it? I should have no objection to swear respecting the first.

But I ask whether, on the second introduction of the forceps, they were pushed on with considerable force? Without going into the bladder?

I do not ask that? I do not think I should take upon myself to swear they were used twice with considerable force.

Can you tell whether they went into the bladder a second time or not? I know that he got into the bladder in a short time, but whether it was the second or third time, I do not know.

Then you cannot say, "the forceps were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance, and with no small degree of force?" They certainly were pushed on afterwards to a very considerable distance, inasmuch, as they were pushed as far as the bladder would let them go.

You thought they were pushed into the bladder? Undoubtedly; of course.

Now, Sir, be so good as to attend to this—you have sworn that this report was

correct, and I am now coming to particulars—do you not say that the meaning of this is, that the forceps were not pushed into the bladder, but to somewhere else; that is, that that is the object of the report? You had better let me look at it.

Well, there it is. [*"The Lancet," containing the statement, was now handed to the witness.*] This representation here, immediately following *somewhere*, appears to me to refer to the first attempt to get the forceps in.

Well, then, Sir, go on: "The forceps were again used, but as unsuccessfully as before:"—We are agreed the first did not go in at all:—"were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance, and with no small degree of force?" If I am not prepared to swear to the truth of that, I am not prepared to contradict it.

Then you do not recollect it? No; I cannot swear to it, either one way or the other.

You did not take particular notice of it? No.

Pray, to whom did you make a communication of your opinion of this operation, because, though you did not do it to Mr. Wakley, or his attorney, you must have done it to somebody? What! spoke of the operation, Sir?

Yes? Why as a natural consequence I could not help it.

I asked to whom? I could not say to whom: several medical friends, at Colchester Hospital: there are two; I told them both of it, I dare say.

Re-examined by Mr. Wakley.

The staff was introduced through the urethra after the incision had been made? Certainly.

Certainly? Certainly.

Lord *Tenterden.* A second time? Certainly, my Lord.

You saw it introduced? I saw it introduced more than once, or twice.

Mr. *Wakley.* Have you ever lost a patient in the operation of lithotomy? No, I have not.

If an opening, sufficiently large to admit the forceps to enter the bladder the first time, had been made, would a second incision have been necessary? Why, no.

No? No.

Have you ever seen me before to-day? Never, that I am aware of.

Mr. John Clapham sworn. Examined by Mr. Wakley.

Where do you reside, Mr. Clapham? At Thornley, near Peterborough.

Are you in practice? I am in practice with my father.

Lord *Tenterden.* In practice as a surgeon? Not as a surgeon, exactly, my Lord.

Mr. *Wakley.* You are a licentiate of the Apothecaries' Company, are you? I am.

Have you studied surgery in one of the London hospitals? I have.

Lord *Tenterden.* In what?

Mr. *Wakley.* In which hospital? St. George's, Sir.

During how long a period? Two winters.

Lord *Tenterden.* Two courses of lectures.

Mr. *Wakley.* Did you witness the operation of lithotomy performed at Guy's Hospital by Mr. Bransby Cooper? I did.

Is the report in "The Lancet," as far as you recollect, correct? It is.

Did the patient appear a healthy man? He did.

A favourable subject for the operation? Yes.

Lord *Tenterden.* You see you are putting a leading question; now the only course I can take, is not to take the answer.

Mr. *Wakley.* Was he a favourable subject for the operation? He appeared so.

What fluid escaped on the withdrawal of the knife the first time? But a small quantity.

What fluid was it? I cannot say what fluid it was—there was a small quantity.

Sir *James Scarlett.* Speak up.

Witness. There was a small quantity of fluid.

Sir *James Scarlett.* But the gentleman asks what was it—was it blood or water?

Mr. *Wakley.* Was it urine or blood? I suppose it was urine.

Was there any gush of urine subsequently? No, not that I saw.

Did Mr. Cooper use a knife to enlarge the opening, before he could introduce the forceps? He did.

Lord *Tenterden.* That is, he used a knife twice? Yes.

Mr. *Wakley.* Were the forceps introduced three or four times before he attempted to make the second cut with the knife? They were introduced more than once.

Lord *Tenterden.* Before the second cut was made, is that what you say? Yes.

Mr. *Wakley.* Had you ever seen that done in any previous operation of lithotomy? In no operation I have witnessed.

Were the forceps introduced with much force? Certainly.

Did the operator appear in a state of self-possession? He did not.

If the operator could not get the forceps into the bladder, where could they go? Why to the outside of it.

To either side? I cannot tell where they went to.

Sir *James Scarlett.* A very safe answer; if they could not get into it, they went without it.

Mr. *Wakley.* Did Mr. Cooper say that he could not reach the bladder with his finger? He did.

Was much force used with the hand? There was.

Lord *Tenterden.* What, Sir?

Mr. *Wakley.* Much force used with the hand? Great force.

Did Mr. Cooper use more than one gorget? He did.

Did he introduce sounds and staves at the wound in the perineum? Yes.

Lord *Tenterden.* At the wound in the perineum? Yes.

Mr. *Wakley.* Had you, on any former occasion, witnessed the gorget used after the knife had been used to cut into the bladder? No.

Did he employ a scoop? Yes.

For what purpose is that instrument used?

Lord *Tenterden.* We have had that already.

Mr. *Wakley.* Not from this witness, my Lord.

Lord *Tenterden.* No; but the fact we have had: he use is to take out the fragments of stone: you need not prove that fact again, as, I think, I did not find it was contradicted.

Sir *James Scarlett.* Which fact?

Lord *Tenterden.* That the use of the scoop is to take out fragments of stone.

Sir *James Scarlett.* I shall certainly not bind myself to any course, as I do not ask any question just now; for I believe I am to be at liberty to make out my case in my own way.

Lord *Tenterden.* Very well.

What is the use of it? As you said, my Lord.

But you must state it, Sir: you are speaking on your oath? To remove any fragments of stone that may have been left.

After the extraction of the stone by the forceps? Yes.

Mr. *Wakley.* Were there any fragments of stone in this case? No.

Did the operator state, in the presence of the patient, that he could not understand the difficulty? He did.

Did you ever hear an operator on any former occasion speak of the difficulties of the case in the presence of his patient? No.

Did the operator say that he could feel the stone with his sound? Yes.

A Juror. Have the goodness, Sir, to elevate your voice—we cannot hear.

Mr. *Wakley.* Speak out, Sir, if you please: did he state that he could not feel it with his forceps? He did.

Did you hear the staff strike the stone when in the bladder? I did.

Can you explain why the operator could feel the stone with his sound, and could not feel it with his forceps? I cannot explain that. The narrowness of the opening would not admit it.

What opening? Into the bladder.

Admit what? The forceps.

Lord *Tenterden*. Then do you explain it by that means? That 's the only explanation, my Lord.

Well, now attend—I cannot explain the feeling of the stone with the sound, and not with the forceps, except by the narrowness of the opening not admitting the forceps—is that what you mean? Yes.

Mr. *Wakley*. Did the operator ask Mr. Callaway if he had a long finger? No, I did not hear him ask Mr. Callaway.

Did the operator measure fingers with Mr. Dodd? He did.

Did you ever see an operator act in a similar manner while his patient was bound on the table? Never, Sir.

Did the operator appear conscious of what he was doing? He appeared confused.

Were his movements hurried? They were.

Did he use the various instruments out of their accustomed order? Yes.

What length of time have the operations of lithotomy you have witnessed occupied? From two to eight minutes.

Have you seen any that have lasted for a longer period than eight minutes? Not until I saw the one at Guy's Hospital.

What length of time did that operation occupy? An hour.

Did you ever witness an operation before in which so much violence was used? Never.

Do you believe it possible that the patient could recover after such an operation? No.

Are you aware of any circumstances in the anatomy of the parts which were calculated to render the operation so long and tedious? No.

Did you see the stone? I did.

Sir *James Scarlett*. Speak up, Sir. Yes.

After it came out, I suppose? Yes.

Mr. *Wakley*. How large was it? Not so large as a walnut.

Lord *Tenterden*. Not so large as a walnut? No, my Lord.

Mr. *Wakley*. Had the blood ceased to flow from the external wound before the operation terminated? I don't exactly recollect that.

Did the parts appear bruised? Yes.

Had the edges of the wound a darkened appearance? I don't know.

Cross-examined by Sir James Scarlett.

What age are you, Mr. Clapham? Twenty-one, Sir.

When did you become twenty-one? when were you twenty-one? I don't know the day.

Lord *Tenterden* Don't know when you were twenty-one? I am not turned twenty-one, my Lord.

Sir *James Scarlett*. O, not turned twenty-one yet? No.

Then no wonder you don't know when you were twenty-one: when were you twenty? Last January.

Have you quitted London to follow your profession in the country? I have not finished studying.

You are still a pupil, then? I am a pupil at St. George's Hospital.

Have you been long in town before to-day? No, Sir.

How long? I came up from the country the night before last.

Have you had any explanation of these matters since you came to town? No.

No explanation? No.

Had you not a string of written questions put to you? I had not.

You had not? No.

You examined no model since you came to town? No.

Very well! how came you to be at this operation? I heard there was to be an operation of lithotomy, and I went down to see it.

You went from curiosity? Yes.

Are you a reporter for "The Lancet?" I am not.

You are not the gentleman, then, who made the report? No.

I presume you never performed an operation? I have not performed the operation of lithotomy.

I mean lithotomy—you have seen it performed several times? I have.

Has the surgeon who performs it had a considerable number of instruments in his case? He always has instruments near him.

There are a variety of instruments used for that operation, are there not? Yes.

How many have you seen, think you, in your life? About half a dozen.

Lord *Tenterden*. Operations, you mean? Yes.

Sir *James Scarlett*. Were you in town in the September following? No.

Eh? This last September?—the September following the operation?

Yes? No.

Then have you never seen any operation at Guy's Hospital except that? I have seen no operation at Guy's Hospital except the one in question.

Whereabouts did you stand or sit? In the third or fourth row from the operator.

In front of him, I suppose? Yes, a little to his left hand.

How many persons were there, do you think? I cannot say: a great many—a great number.

Two hundred, do you think? I should think there were: two hundred, did you say?

Yes? O, I understood you a hundred: there must have been from one to two hundred.

Mr. Callaway is the surgeon who assisted? Mr. Callaway was there.

There are always two, are there not—you never saw it performed without two? No, I never did.

Is he a competent judge, do you think? I should think so.

Who handed the instruments to Mr. Cooper? That I don't know.

Pray, when the first incision was made, are you of opinion that it did not reach the bladder—the knife did not reach the bladder? Not on the first incision being made.

O, you think it did not? No.

The first incision? No, it did not reach the bladder—the first incision.

Consequently, the liquor that flowed could not be part of the urine?—you had better recollect yourself in that, for I am afraid you thought it was urine, and so thought the other gentleman? I did not understand him so: I did not understand the other gentleman so when he said the first incision; the first incision was only carried through the integuments.

I don't mean the first incision of all; I mean before the forceps were introduced, there was then a small quantity of fluid escaped,—was it urine or not? I should think that most likely it was urine.

Lord *Tenterden*. Before the forceps were used? Yes.

It was fluid you supposed to be urine? Yes.

Sir *James Scarlett*. Did you see the fluid? I did.

Then you had no doubt it was urine? No.

And you had no doubt the knife did reach the bladder? There is no douht of it.

Then if you had been representing this case, you would not have said the knife went "somewhere," you would not have said it went in "somewhere" (*A pause.*)—Now, come, Mr. Clapham, if you had been reporting the case, you would not have said the knife went on somewhere, but you would have said it went into the bladder; you would not have reported that it went "somewhere?" No.

No?—you say you are a Licentiate of the Apothecaries' Company? Yes.

You are? Yes.

And you are not twenty-one? No.

When did you obtain your licence? In the spring.

What, did you represent your age truly? No.

Then you represented it falsely? It was represented falsely.

For you? Yes.

Did you make any representation of it? Yes, I made a representation of it.

And that was false? It was not correct.

You mean by that it was false? Yes.

Well, Mr. Clapham, I won't trouble you any further.

Mr. *Wakley*. Is it customary for young men to obtain their certificates at the Apothecaries' Hall before they are twenty-one? It has been done.

Lord *Tenterden*. Do you mean to say it is customary to represent untruths?

Sir *James Scarlett*. Do you take an oath? No.

Does nobody take an oath? No.

You have a certificate of your age? Yes.

Lord *Tenterden*. Who gets that? where did you get yours? It's generally written by the clergyman.

Sir *James Scarlett*. Then is the clergyman in the habit of writing these—will you have the goodness to tell me if clergymen are in the habit of writing these false——

Lord *Tenterden* No; I think we ought to go no further with this: I think it my duty to go no further; for I think it my duty to say, that any person who gets his certificate by a false representation, is liable to be indicted for perjury, and punished, therefore I cannot go further.

Mr. Joachim Gilbert sworn. Examined by Mr. Wakley.

Are you a member of the College of Surgeons? I am, Sir.

Were you at Guy's Hospital in March last? I was, Sir.

Did you witness an operation of lithotomy there by Mr. Cooper? I did, Sir.

Have you read a report of that operation in the 239th number of "The Lancet?" I have, Sir.

Did you witness the whole of the operation? No, Sir, I did not.

Lord *Tenterden*. Then you only saw part of it? Only part, my Lord.

Mr. *Wakley*. How long were you present? I should think five-and-thirty minutes, Sir.

Thirty-five minutes? Thirty-five minutes.

Why did you not remain longer? Why, Sir, I could not bear to see the horrible manner in which the operation was performed.

Sir *James Scarlett*. Eh? I could not endure the feeling of seeing the manner in which the operation was performed.

Mr. *Wakley*. Do you mean the horror from seeing the operator use so much violence? It was so.

Did he use unnecessary violence, did you conceive? He did so.

A *Juror*. Speak out.

Sir *James Scarlett*. He used great and unnecessary violence.

Mr. *Wakley*. Did he use the instruments in the accustomed manner of other operators? He did so.

Do other operators use great force and unnecessary violence? No.

After the staff was introduced, an incision was made in the perineum? It was so.

The knife was carried forward?

Sir *James Scarlett*. You had better let him give it—don't you give the lecture here.

Mr. *Wakley*. Describe the operation? I saw the staff introduced by Mr. Bransby Cooper, then Mr. Callaway was desired to hold the staff on the left side of the patient, and then Mr. Bransby Cooper made what is called the external incision, the cut, which he did very properly; but then going on with the second incision, he went, I cannot pretend to say where, from being seated at the side—I cannot pretend to say—but he was a very long time in doing it, and after finishing what was considered the second incision, he carried his knife forward, and I should say he held his arm too high—and then he carried his knife forward, I should consider between the bladder and the rectum—the fundament. (Lord *Tenterden*. Go on with your narrative.) Then there was a flow of blood followed; he then passed his finger into the wound, and then he carried in a pair of forceps on his finger—a pair of straight forceps. (Lord *Tenterden*. Go on.) He attempted to extract the stone; he failed in doing so; he passed them in four times. (Lord *Tenterden*. He did what?) He passed in those forceps four times following, and he did not succeed in extracting the stone. He then passed in his finger often into the wound, and used great violence in so doing. I should say, on withdrawing those forceps a squashing noise was heard. (Lord *Tenterden*. Go on.) He then called

for a crooked pair of forceps, which he passed in upon his finger into the wound. (Lord *Tenterden.* Go on.) And poked them about in the wound, and he used great violence in so doing. He then withdrew them, and passed them in a second time; and he again withdrew them, and passed them in a fourth time. (Lord *Tenterden.* Well, go on.) Then he called for Sir Astley Cooper's knife—Sir Astley was mentioned. (Lord *Tenterden.* Sir Astley's knife? Well, go on.) And he made a cut with this knife, and passed in his finger into the wound again, and used violence in passing his finger, twisted the finger round several times in the wound; then he did not succeed in extracting the stone. He then began to appear to be very much confused; his hand shook a great deal. (Lord *Tenterden.* Go on.) And appeared very pale, and his lip shook very much, and that, as I considered, was about thirty-five minutes, at the expiration of which time, I quitted the theatre.

Mr. *Wakley.* What was your impression relative to the operation, as far as you saw it before you left the theatre? Why, Sir, I thought it was badly performed, very badly.

Lord *Tenterden.* Very what? Very badly performed: very improperly performed.

Mr. *Wakley.* Have you witnessed many operations of lithotomy? A great many Sir.

How many do you suppose? At least twenty.

How long have they lasted, generally? I never saw one last longer than from seven to ten minutes.

And how quickly have you seen the operation performed? In less than a minute.

In less than one minute? Yes, Sir.

Cross-examined by Sir James Scarlett.

Where do you carry on your profession? At Beaminster, in Dorset.

How long have you been there? Four years and a quarter.

Are you an assistant of any gentleman? Yes.

What is his name? Mr. Phelps.

Is he a connexion of the defendant, Mr. Wakley? Yes.

What connexion? He married Mr. Wakley's sister.

What were you doing in this town at the time this operation was performed? I came to pass the College.

Did you go to Guy's from curiosity? No, I went there to be instructed.

Lord *Tenterden.* Were you a pupil there? I was, my Lord.

Sir *James Scarlett.* You went there to be instructed? Yes.

Why did you not wait till the end of the operation? Why, Sir, my feelings would not permit me to do it.

Did you see the report before it was printed? No, Sir.

Eh? No, Sir James, I did not.

Nor hear of it? No.

You were in London when it was printed, of course, but you had not got your certificate at that time? I beg your pardon,—I did not hear what it was you said.

You were in London at the time, but had not got your certificate? Yes, I saw it in "The Lancet," but not before.

But you had not seen Mr. Wakley in the meantime? No.

Now you have given us a very succinct account of this operation, but you jump from the first to the second cut; I should suppose, from your account, he could not have got to the bladder? He could not have cut the bladder in the first incision.

No, I don't mean the incision of the integuments: are you of opinion he reached the bladder? He did not at that time.

Is the first incision cutting into the urethra? No.

What then? You are to avoid the urethra at first.

What are you to do then? To lay open the integuments.

Then you are to cut the flesh? No, the fat and skin.

What then? You are to pass your finger in and avoid a certain part of the urethra; then you feel for the groove of the staff which is in the penis.

You say the first incision was not intended to touch the urethra or bladder, but you say the second was, and you say the second did not? Not the second.

And it was made with unnecessary force and violence? Not the incision.

The incision that ought to have cut the bladder did not? It did not; that is, I cannot swear it; it was all in the dark; I was not in front of the patient to see how the incisions were made.

What makes you speak with confidence of it then, if you were not in a situation to see? For this reason,—why did he not extract the stone when he passed the several instruments.

Lord *Tenterden*. Then the reason you say you have for saying he did not get into the bladder, was, that he did not extract the stone? Yes, and another reason, there was no urine flowed.

Sir *James Scarlett*. Then if you say there was no urine flowed, and if Mr. Wakley's two first witnesses said urine did flow, they must have perjured themselves? I don't know what they said.

You did not hear them? No.

It 's very fortunate for the sake of justice, you did not: then you are certain that the second incision did not get into the bladder? Yes.

Where did it go? Somewhere between the rectum and bladder, I should suppose.

Then he thrust in the forceps? Yes.

And used them with considerable force? Yes.

In short as if he meant to stab the man? Yes.

Yes; you will swear that? I will swear that he poked them in with unnecessary violence.

Just as if he meant to stab the man? I won't say that.

Lord *Tenterden*. You did say so, Sir? I said so, but—he poked them in.

Sir *James Scarlett*. Then he did it with violence? Yes.

How near did you stand? I should say about a dozen feet from him.

Were you in the rows of benches? I was in the first row of benches for the pupils.

On the side? On the side.

Now, I dare say, as you carry on business at Beaminster as assistant to Mr. Phelps, I dare say you see "The Lancet?" Yes, Sir James.

"The Lancet" is a work of much esteem there, I suppose? Every where, Sir—every where.

Are there any rows of seats before the pupils? Two.

Well, then, you were at the end of the first? Yes.

You were at a convenient place when your feelings became agitated, to be able to go away? Yes; when I was annoyed at it, I left.

I wonder you did not turn sick? O no, Sir James; I have witnessed too many operations.

I am told this "Lancet," has a considerable sale? Yes.

I am told 6,000 a week? I don't know.

Do not you know from the defendant what it is? No; it may be 12,000: one derives great benefit from it.

Did you make this report? No.

Did you ever make any communication to "The Lancet?" Never.

You are not one of the men of talent, then, that he employs? No.

That is very unfortunate: he will, no doubt, add you to the list of them very soon.—How often did you perform an operation yourself? I never performed lithotomy.

How long time have you been a pupil at Guy's? Fifteen months.

You were not there in September? No.

Was that the only operation you have seen there? I have seen at least fifteen there.

Did you see one in September afterwards? I was not there, Sir James: I was not in London.

Did you ever see an operation performed there by Mr. Bransby Cooper before? Not of lithotomy.

Not of lithotomy? No.

Nor since? No.

Lord *Tenterden.* You say you have seen operations of lithotomy there, but they were not performed by Mr. Cooper? No.

Sir *James Scarlett.* When did you obtain your certificate? In June.

I June last? Yes.

You are one-and-twenty? Yes, nearly thirty.

Supposed to be a man of good judgment?

Lord *Tenterden.* Now, do you wish to ask him any thing?

Re-examined by Mr. Wakley.

Have you seen Mr. Bransby Cooper perform any other operations? I have, Sir.

Do you consider him a good operator? No, certainly not.

Sir *James Scarlett.* I have a right to ask a question upon this. From exercising your skill, you think he is a bad operator in general? I should say so.

You have no doubt of it? I have none at all.

And it would be a great public benefit to drive him away from that institution? I have no doubt of that.

And to prevent private families putting confidence in him? That I have nothing to do with, as I am speaking of him as connected with a public institution.

But you know the same skill must be employed in private families as is employed in public institutions: you are of opinion, from what you have seen, he is an unskilful surgeon, and ought not to be a hospital surgeon? I should say so, Sir James.

What is the operation you consider now, as the one that requires the completest and first skill in a surgeon, just tell me that; you know lithotomy is very common? Ay; but that is very important.

What would you consider the first? I should think that required as much skill as any.

Did you ever hear of a surgeon tying up the subclavian artery? I must have read the account: I saw Mr. Key once perform the operation.

Do you know what it means? I do.

Well, as an experiment of your judgment, I ask whether that, or the operation of lithotomy, requires the most consummate skill and experience?

Lord *Tenterden.* What was the operation?

Sir *James Scarlett.* I asked, my Lord, whether he considers tying up the subclavian artery, or the operation of lithotomy, requires the most consummate skill and experience? I should say that lithotomy was much more important than taking up the subclavian artery.

Lord *Tenterden.* Important is not what is asked; it is the skill? Then it requires more skill.

Sir *James Scarlett.* You think that an every-day man might tie up the subclavian artery, but that it requires great skill to perform the operation of lithotomy? I should not say an every-day man, neither, Sir James.

But an ordinary country surgeon? Yes, certainly.

So that any qualification for tying up the subclavian artery in a masterly style, would be what would be common in any man? I should say that a man required skill to perform that operation, but I should say much more to perform the operation of lithotomy.

Have you attended any lectures or instructions since you came to London to be a witness? No, Sir.

Now, have you not been at one? No, I have not, Sir James.

Never was to any one professional lecture? No; not even a counsel's, Sir James.

Lord *Tenterden.* Have you been present at any discussion? I have not.

Sir *James Scarlett.* You have had no conversation with Mr. Wakley? I sent my card, and he called at my lodgings, but was not there two minutes, and he never sat down.

That is the only time you saw him? Since I came to town.

Mr. *Wakley.* Did I submit any written statement of questions to you? No, Sir.

Do you consider that a very ignorant surgeon might accidentally tie the subclavian artery with success? I beg pardon.

Do you consider that a very ignorant surgeon might accidentally tie the subclavian artery with success? Yes, he may.

Yes, he may? Yes.

Mr. John Thomas sworn. Examined by Mr. Wakley.

Did you witness the operation of lithotomy performed by Mr. Bransby Cooper in March last? I did.

Have you read a report of that operation in "The Lancet?" I have not.

You have not? I have not read the report in "The Lancet."

Do you hold any office at Mr. Sleigh's theatre? I am Demonstrator of Anatomy, at Mr. Sleigh's School of Anatomy, Dean-street, in the Borough.

Lord *Tenterden*. Is he a surgeon there? Yes, my Lord.

Mr. *Wakley*. Was the operation well performed? To speak from impression, I think I never saw an operation performed so unscientifically, and in such a bungling manner.

A Juror. Speak out, Sir? To speak from impression, I think I never saw an operation performed in so unscientific a manner, and so bunglingly, merely from impression.

Mr. *Wakley*. Have you ever spoken to me before to-day? I don't, even now, know what is your name.

Cross-examined by Sir James Scarlett.

You have not the least idea, then, of the name of the author of "The Lancet?" I know the name of the author of "The Lancet."

But you never saw him before to-day? I never saw him at all.

But as to reading his work? I am in the habit of doing that almost continually.

Pray, where is this school of Mr. Sleigh's, for I don't know that it's much known? No. 1, Dean-street, Borough.

Describe what you mean by a School of Anatomy there? By a School of Anatomy, I mean a place where pupils are formed into a class, and receive regular instructions in anatomy and physiology, and have those demonstrators appointed over them who can point out to them with accuracy the different parts of the human body.

Who is Mr. Sleigh? He is senior surgeon to the Western Hospital?

Where is it? It is situated in Seymour-street, Bryanstone-square.

That is a newly-erected institution? Yes.

How long is it since it was erected? About a year and a half.

Who established it? Mr. Sleigh.

And he lives at No. 1, Dean-street, Borough? No, he lives in Upper Seymour-street, Portman-square.

He has several schools, then? He has two.

Are you the demonstrator at both? No, at one of them only.

You have a good many pupils, I hope? We have twenty.

How long have you been demonstrator? Since the first of October, 1828.

Now, as the gentleman who has examined you—we will suppose him to be the author of "The Lancet,"—never saw you before to-day, nor had any conversation with you,—can you tell us how it happens that you came here to-day to state your impression? That rather surprised me, for I did not get the subpœna to attend on this trial till half-past eight o'clock last evening.

Then you could not be one of the witnesses for whose absence he put off the trial of this cause? No.

How happened it that you were brought here? I was in conversation with some of the pupils in the Borough, when one of them stated that the cause of Cooper v. Wakley was put off from October, and in the course of that conversation I made an observation—I said I had witnessed the operation.

I don't want to know the whole that passed—what is the name of the gentleman to whom you made the remark? Mr. Brainsford.

A pupil of Mr. Sleigh's? Yes.

And through him you suppose it went to Mr. Wakley? He told me so to-day.

Do you make communications to "The Lancet?" I do, sometimes.

Do you make many communications? I have made four.

They have been published? They have all been inserted except one.

Did you put your name to them? No, Sir.

Were they recently made? I made one in October, which is inserted, on Medical Education.

Well, I don't ask what they were upon—were they all recent, or a year or two ago? No, at long intervals.

How long did you stay at this operation, which you say was the most bungling you ever saw? I arrived at the theatre subsequent to the incision into the bladder.

But we understand from some of the witnesses that the incision into the bladder was made very early, and from some, very late, and therefore we cannot tell from that, you see, when you arrived? There was the common external incision made, and I saw no urine gush, but I saw the scalpel used afterwards.

How long did you stay? I think I must have been there about five-and-thirty minutes.

You came in after the operation began? Yes.

Where did you sit? As it might be over here, and the patient was directly opposite.

Now that does not give me any idea—your pointing so vaguely; how many rows were between you and the operator? As to that I cannot speak with certainty, but I was directly opposite to him in the uppermost row.

The uppermost row of all? Yes.

That is to say, you were about the greatest distance from him? Yes.

Now, did you say you saw the scalpel used? I did.

Are you sure of that? I am sure of that.

But you came in after the incision into the bladder? Yes.

Well, just recollect yourself, for if I am rightly informed, no scalpel was used after the incision was made into the bladder? I don't say the scalpel made the first incision into the bladder—I was not there then.

Yet you saw the scalpel used? Yes; I saw it used after I was there.

By the scalpel, you don't mean Sir Astley Cooper's knife?—[*A pause;*]—do you know what is called Sir Astley Cooper's knife? No, I don't, Sir.

What instruments did you see used? The scalpel, Sir.

What besides? I saw forceps used—several kinds of forceps.

How many? I don't know how many kinds.

Don't know how many kinds! I should have thought it would have made an impression on your mind? No, I don't.

Were there more than one or two kinds? I apprehend there were.

What besides? I saw a sound introduced.

Well, what more? I recollect nothing more, to my knowledge.

No gorget? No, I don't recollect seeing the gorget.

Neither blunt not cutting? Neither blunt nor cutting.

And the only cutting instrument you saw used was the scalpel? No.

And what Sir Astley Cooper's knife is, you don't know? No.

Never heard of it? Yes, I have.

Did you ever perform the operation of lithotomy? No.

How long have you been demonstrator? Since the 1st of October last.

Then you were not demonstrator when you went to see this operation? I was only demonstrator since the 1st of October last.

What were you when you went to see this operation? I was then a pupil of Mr. Green's, at St. Thomas's Hospital.

Allow me to ask whether you attended any other operation at Guy's Hospital Yes, I have seen Mr. Key operate.

Have you seen Mr. Bransby Cooper operate at any other time? No, Sir.

Are you sure of that? Quite sure of it.

Re-examined by Mr. Wakley.

You were speaking of a conversation you had with some pupils? Yes.

Will you repeat the remainder of that conversation?

Sir *James Scarlett.* No, he may not.

Lord *Tenterden.* No, he says that was the means through which you became acquainted with the fact that he was present at the operation.

Mr. *Wakley.* He stopped, my Lord, after repeating the first part of it.

Lord *Tenterden.* No, indeed, he did not.

Mr. Geoffrey Pearl sworn. Examined by Mr. Wakley.

Did you witness the operation performed at Guy's Hospital, and reported in the 239th No. of "The Lancet?" I did.

You did? I did witness it.

It was performed by Mr. Bransby Cooper? Yes.

Is there any thing materially incorrect in that report?

Lord *Tenterden.* He has not said he read it.

Mr. *Wakley.* I beg your Lordship's pardon: you have read it? I have read it.

Is there any thing incorrect in that report? I am not aware of there being any thing incorrect in it, except that Mr. Bransby Cooper said "Sir Astley's knife," instead of "My uncle's knife."

Did the patient appear a healthy man? Yes, a very healthy man; he had every appearance of being a healthy man.

After the first incision had been made, and when the knife and staff were carried forward into the bladder, did a gush of urine flow? There was not a gush, Sir, as is usual in the performance of the operation of lithotomy—there was a trickling of fluid—a trickling, but not certainly a gush.

How far were you seated from him? I was seated in about the third row, rather to the operator's right hand.

Lord *Tenterden.* Where did you sit? I sat in about the middle row, rather to the operator's right hand.

Mr. *Wakley.* Could you, at that distance, discover the difference between a small quantity of arterial blood, and a small portion of venous blood and urine mixed? Yes, I should conceive I could distinguish between arterial blood and venous blood mixed with urine.

How could you distinguish the difference? The arterial blood being very distinguishable by spouting out upon its escape, whilst the venous blood would trickle down.

Attend to the question which I shall put to you again: could you, at that distance, distinguish the difference between a small portion of arterial blood, and a small portion of venous blood and urine mixed? I think I could.

Was it blood or urine, then, that followed after the knife and staff were thrust forward with the intention to penetrate the bladder? I believe it to have been a small portion of both.

Was there a gush of fluid at any subsequent part of the operation? I did not observe a gush of fluid at any subsequent part of the operation.

Did Mr. Cooper use a knife a second time to enlarge the internal opening before he could introduce the forceps? I rather think he attempted the introduction of the forceps after the first incision, but failing in his attempt to use them, he subsequently used Sir Astley's knife, and I believe he used another knife.

There were various forceps used? There were various, and the same forceps introduced repeatedly.

The same forceps introduced repeatedly? Yes.

Was much force employed? Very great force: the operator introduced the forceps as far as he could, then he opened them and shut them, producing that *squash, squash,* mentioned in the report.

How did he open and shut them? He opened and shut them with great violence.

Was this the description of forceps [*showing a pair*] he used? Yes, I should suppose so.

And curved forceps? And curved forceps.

Were they used also? Yes.

Were they pushed far in? They were pushed up to a considerable distance.

Was much force used with the hand? Very great force; in fact, I believe three fingers of the hand were introduced and turned round.

Have you witnessed many operations of lithotomy? I have witnessed, I should suppose, twenty.

Was either of those twenty performed in a similar manner? Not one—certainly not.

What time did they occupy, on an average? The time of those operations, or the operation of Mr. Bransby Cooper?

The others? I should conceive they did not average more than five minutes.

Did you see any operation that lasted for a longer period? I have seen one performed by Mr. Green that lasted for a considerable time.

How long did that operation occupy? I should suppose nearly an hour.

Were there any difficulties to account for that protracted operation? Yes, there were, decidedly.

What were they? The man had been twice operated on before, and consequently the cicatrix was very hard and unyielding, and there were two large stones—— (Lord *Tenterden*. Stop—go on.) There were two very large stones——

Two very large stones extracted? Two very large stones extracted, which crumbled into an innumerable quantity of small pieces.

Mr. *Wakley*. What was the last thing you said? (*Lord Tenterden*. Two very large stones extracted, which crumbled into an innumerable quantity of small pieces.)

Mr. *Wakley*. Where did they crumble into an innumerable quantity of small pieces? They crumbled in the bladder, I believe, or in extracting from it.

Was the time occupied in removing the fragments? It was.

Was there any force employed in removing those stones? None whatever.

Was Mr. Green's manner of using the forceps and scoop similar to that of Mr. Bransby Cooper? No, it was decidedly contrary.

What was the size of the stone in Mr. Cooper's case? It was a small stone.

A very small stone? It was a small stone.

What size? compare it to something? I should say it was not larger than a Windsor bean.

Did Mr. Cooper state, during the operation, and in the presence of the patient, he could not explain the cause of the difficulty? He did; he turned round to the pupils, and said, I can conceive no earthly reason why I cannot extract this stone.

Did Mr. Cooper say that he could feel the stone?

Sir *J. Scarlett*. You had better ask what he said; you have been admonished a hundred times, and you would wish the truth to be told.

Lord *Tenterden*. Did he say any thing about feeling it?

Mr. *Wakley*. Did he say any thing about feeling it?

Lord *Tenterden*. Did he say any thing about the stone? Yes, he did; he said, you must hear the stone, but I cannot extract it when I apply my forceps—what is the reason I cannot conceive. The stone was heard all over the operating theatre, my Lord.

Lord *Tenterden*. Don't you see that I am writing down what you say.

Mr. *Wakley*. Can you explain why he could feel it with the sound and not with the forceps? (Sir *J. Scarlett*. Of his knowledge of the facts.) I cannot explain the reason: if he had introduced his forceps in a scientific manner I should think he might have felt it.

Mr. *Wakley*. Will the forceps pass through an opening as small as that through which the sound will pass? No; a forceps certainly will not pass through an opening through which a sound will pass.

Lord *Tenterden*. That is, the sound will pass through a smaller opening than the forceps? Yes.

Mr. *Wakley*. Did Mr. Cooper appear to be in a state of self-possession during the operation? No, he did not.

Sir *J. Scarlett*. Speak up? He did not appear to be in a state of self-possession.

Mr. *Wakley*. Did it appear that he used his instruments without having any rational object in view? He did appear to use his instruments without having any rational object in view.

How long did the operation last? Nearly an hour.

Did you see the post-mortem examination? I witnessed the parts after they were removed from the body.

Lord *Tenterden.* By witnessed, you mean *saw*, I suppose? I saw them.

Mr. *Wakley.* Was there any thing in the state of the parts to account for the delay in the operation? No, I did not see any thing, certainly.

Did you see the gorget introduced? I did.

Lord *Tenterden.* Now you are going back.

Mr. *Wakley.* My Lord, I am coming to a material part.

Lord *Tenterden.* You saw the gorget introduced? I did.

Mr. *Wakley.* How was it introduced? It was introduced along the staff.

Was it held obliquely? It was held in the manner it is usually held, obliquely from the *os coccygis* up to the *umbilicus.*

Lord *Tenterden.* I hope this is not material?

Mr. *Wakley.* It's most material.

Lord *Tenterden.* Then I don't hear it.

Mr. *Wakley.* It's most material you should answer these questions distinctly, and speak up? Obliquely, upwards and forwards.

In what direction was the edge, the cutting edge, of the instrument? The cutting edge of the gorget is usually horizontal.

And what part was cut, to what point? It would point to the lateral part of the bladder; to the side of the neck of the bladder and prostate gland.

To what part of the ischium? I should say it would divide one of the lateral lobes of the prostate gland, and a part of the neck of the bladder in a horizontal manner.

Lord *Tenterden.* Divide what? Making a section in a horizontal manner would divide the prostate gland.

Mr. *Wakley.* Prostate gland, my Lord.

Was that the form of incision you found through the prostate and neck of the bladder? I should say there were two incisions, where there appeared to be a portion of the neck of the bladder included between the two incisions.

Were those incisions oblique or horizontal? They were obliquely, downwards.

Did you observe any horizontal incision? No, I did not observe any horizontal incision.

Is there any other object for introducing a cutting gorget than that of making an opening into the bladder? Not for introducing a cutting gorget.

Lord *Tenterden.* A cutting gorget is used for what purpose? For cutting into the bladder, my Lord.

Mr. *Wakley.* Must it go into an improper direction if it does not go into the bladder? It would go to no other place than between the bladder and the rectum.

Do you believe it possible the patient could have recovered after this operation? I did not believe it possible.

Are bruises or cuts of the bladder deemed the most dangerous? Bruises of the bladder.

Lord *Tenterden.* Are deemed more dangerous than cuts? Much more so, my Lord.

Mr. *Wakley.* On the post-mortem inspection, did the bladder appear much bruised? The bladder was immensely thickened; the coats of the bladder were very much thickened.

Lord *Tenterden.* The bladder appeared very much thickened, is that what you say? Yes.

Mr. *Wakley.* What would produce thickening of the bladder? I did not understand your question.

What would produce thickening of the bladder? I suppose inflammation; violent inflammation.

What would bruises of the bladder be likely to produce? They would be likely to produce disorganization and great inflammation.

Have you seen Mr. Bransby Cooper perform many operations? I have seen him perform several.

How does he operate generally? I should not conceive him to be a good operator, by any means.

How long have you been a pupil at Guy's Hospital? I have been a pupil there more than a year.

Are you a member of the College of Surgeons? I am not a member.

Do you intend going to the College? I do intend.

Must you produce a certificate from Mr. Bransby Cooper when you apply to the College? I must produce a certificate signed by the surgeons of Guy's Hospital.

Lord *Tenterden.* That's no answer: there are more than one surgeon, are there not? There are three.

Cross-examined by Sir James Scarlett.

How long have you been attending the hospital? A year.

Do you mean that that was your first commencement? My first commencement was in October, 1827.

Where were you educated before that? I was educated at Woodbridge, under an army surgeon.

Were you apprenticed to him? I was.

Did you ever perform the operation of lithotomy yourself? I never did.

Your commencement was in October, 1827, and this operation was performed in March? This operation was performed in March, 1828.

Do you continue at that hospital? I do.

Then you have seen all the operations performed there, most likely? I believe I have missed but two.

You see "The Lancet" regularly? I read it regularly.

Do you make any reports for it? No.

Never did? Never did.

Did you see an operation performed in September last? I was not in town this last September.

Did you ever see any other operation performed by Mr. Bransby Cooper, of lithotomy? I am not exactly aware that I ever did.

But you have made up your mind that he is not a skilful operator? I never saw him perform but one operation skilfully.

That you thought: what was that? That was tying the subclavian artery.

You saw that? Yes.

But that's an operation that a man of ordinary skill may perform? I should conceive it to be a difficult operation.

Well, but I wish to know whether you agree with the witnesses: you have heard the witness examined to-day, who is a regular surgeon, practising at Beaminster, that a man may accidentally tie that artery without any skill at all? I believe that a man in the habit of demonstrating on anatomy, and seeing the parts frequently, might do it.

Then you say a man without any skill at all may do it? No: I say it may occasionally be performed.

If you, for example, were called upon to tie it, or rather had occasion to have it done, would you consider it of importance what surgeon you applied to? Yes, I should consider it to be of importance what surgeon I applied to.

Of course you would not apply to an ignorant man who you thought had done it once by accident? No.

Who was the person that handed the instruments in this case? Mr. Laundy.

Who was the person who stood nearest to the patient, next to the operator? Mr. Callaway.

Who was the person who, in your judgment, had the best opportunity of seeing what the operator did besides himself? There were many who had an opportunity of seeing.

But you should conceive the persons nearest to him had the best? Yes, they might have seen best.

They might have seen if they had opened their eyes: you give an exceedingly cautious answer: when did you read this report in "The Lancet" first? I believe I read it on the day it came out, on a Friday: I generally get it on Friday afternoon.

Had you expected to see it? It was announced before it appeared in it.

Had you expected to see it? Yes, I had.

Then you were aware that it would be inserted? I was not aware, but I thought it would: these operations are generally inserted in it,

But I dare say you can tell us who conveyed it to Mr. Wakley? No, I cannot.

You have no idea? To say certainly I might form a suspicion with others.

You might form a suspicion with others: now it struck you immediately that the operator did not use the phrase "My uncle's knife, but "Sir Astley's knife?" It did, but I have been round the wards of that hospital repeatedly when he has used "My uncle's gargle," and "My uncle's mixture." (*Roars of laughter.*)

On this occasion, you are sure he used Sir Astley's knife? Yes.

Then the reporter only put that in, "My uncle's knife," to make it more characteristic—more dramatic? I am not aware of that, for I believe he is as capable of using one term as the other.

Who is? Mr. Cooper.

Then why do you swear——

Lord *Tenterden.* No; you are going to reason with him now; you are reasoning very much, Sir James.

Sir *James Scarlett.* You know who gave him the phrase, "My uncle's knife?" No, I do not.

You have only a suspicion? Yes.

Does your suspicion fall on any body that has had a quarrel with Mr. Bransby Cooper? Certainly not, that I am aware of; I am not aware of any body who has had a quarrel with Mr. Bransby Cooper.

You are not? No.

Now I think, when you came to the detail of the operation, I think you said you could discern it was urine that flowed? I should say there might have been some portion of urine; I think there was some portion of urine.

Then if you think there was some portion of urine, you must think the knife had reached the bladder? I don't know that; I think if a person were to make a wound into the urethra, he would have an opening through which a portion of urine would flow.

Especially if the staff were in at the same time? Certainly.

Speak out? If the staff were in at the same time, it would be as likely as not, for it is grooved.

Then you don't think he did reach the bladder? I cannot say that he did, or that he did not.

You are uncertain about it? I am uncertain whether he had made a free opening into the bladder.

Now, Sir, you say you saw the parts afterwards? I did.

Who dissected the body? I went into the room to hear a lecture of Dr. Hodgkin on the best mode of conducting dissections, and there saw Mr. Key, who had the parts in his hands.

But don't you know who dissected them? Dr. Hodgkin dissected them, I believe.

It was his duty, was it not? I believe it was.

Lord *Tenterden.* It was his duty to do it? My Lord, he generally conducts the post-mortem examinations.

Sir *James Scarlett.* Have you been attending any lectures of Mr. Wakley's? No, I have not attended any lectures of Mr. Wakley's.

Have you ever been at his house? I called at his house one morning, but then I had not a lecture.

Was that the only time you called? Only once, and that was last Monday.

Did you know him before? I did not know him till he had asked me my opinion of the operation.

Who introduced him to you? Why, it was very well known——

No, no; give me an answer to my question: who introduced him to you, that he should ask you that question? It was a gentleman of the name of Lambert that introduced me to him.

Oh, a gentleman of the name of Lambert: where was it? I first saw Mr. Wakley at Mr. Lambert's house.

How often have you seen him there? Not above once.

Well, did you make any stay with him there? He merely asked me——

I am not asking what he asked you: did you make any stay with him there? Perhaps an hour or two.

Well, I suppose the conversation turned on this subject? It did.

Lambert was present? He was.

Lambert, of course, agreed in your opinion? Yes.

Now, attend to me, Sir; upon your oath, did you not know, from that conversation in Mr. Wakley's presence, that Lambert was the person who made the report? I did not know, from that conversation in Mr. Wakley's presence, that Mr. Lambert was the person who made the report.

Eh? I certainly did not know, from that conversation, that he reported it.

Not from that conversation? Not from that conversation, nor from any other conversation.

Did Wakley not mention the name of Lambert, as a contributor to "The Lancet," from the hospital? Mr. Lambert was there.

Did Mr. Wakley not mention the name of Lambert as a contributor from the hospital? Mr. Wakley did not.

Now I ask you, Sir, upon your oath, did the whole tone of the conversation not turn upon the fact, that he was the reporter? It did not assume it, so as to convince me, in my mind, that he was.

Oh, convince you—you may not believe either of them: upon your oath, do you mean to say, that nothing passed whatever, to induce you to suspect that he was the reporter? Not from that conversation.

Why should you have suspected him then? Because he was generally suspected.

Why should he have been generally suspected? I don't know; I am not aware of that.

Do you know him intimately? Not intimately.

Have you been often to his house? Not very often.

But that is not an answer? I have not been often.

How many times? I cannot exactly state, but I dare say I never have been there above three times.

And you never met Mr. Wakley there but once? Never but once.

Was there any other person there then? I shall not answer that.

Lord *Tenterden*. You shall? Then there was one.

Sir *James Scarlett*. Was there any other, do you say? Yes.

Was he a pupil? Yes.

Was there any conversation about the operation? Mr. Wakley asked my opinion, and I said no more then, than I have been stating now.

Was there any account given of the operation? Not a detailed account.

Not a detailed account: your answer is a negative pregnant? He asked me if such facts were accurate as were detailed there, and I did say they were.

Upon your oath, did he not ask, and insinuate to you, that the forceps had passed between the bladder and the rectum? I believe that was the opinion of a great many.

Don't give such an answer as that; you are now giving your opinion upon a gentleman's reputation, and answer like a man the questions I put to you; upon your oath, did not they endeavour to induce you to believe that the forceps passed between the bladder and the rectum; did they not endeavour to persuade you to state that? No, they did not endeavour to persuade me to state that.

Did they endeavour to persuade you to believe it? They stated——

Lord *Tenterden*. Did they endeavour to persuade you to believe that it passed between the bladder and the rectum? They stated, certainly, that they believed it passed between the bladder and the rectum.

Sir *James Scarlett*. And did they not state learned reasons for it? They did state very good reasons.

And did they not give those reasons for the purpose of showing their opinion was right, and yours wrong? I did not state my opinion.

O yes, you did: did they not give those learned and scientific reasons for the purpose of getting you to believe that their opinion was right, and yours was wrong? answer like a man. They gave very good reasons to make any one believe that the forceps went between the bladder and the rectum.

Who was present when they gave those reasons, besides yourself: I'll have their names? Mr. Lambert, Mr. Wakley——

Who, again? A Mr. Whittaker.
Who, again? None other person.
None other? None other; certainly not.
You were there? Yes, I was.
Was there a model produced? No.
No model of any parts? He asked me——
Answer the question, Sir: there was no model, whatever, of any part of any subject produced? No.
To assist your reasoning? No.
Any plate or diagram? No plate or diagram whatever.
Well; now you afterwards went to his house? I merely called there one morning.
You merely called there one morning; that means, you went to his house? Yes.
Did you go alone? Yes.
Did you find any body there? Yes; Mr. Wakley.
How long did you stay? A very short time indeed.
That 's no answer? Well, I say I did not stay ten minutes.
Had you any conversation about this? Yes, there was a conversation as to when the trial was coming on, and whether he was going to plead his own cause.
Now, upon your solemn oath, Sir, do you believe the forceps did pass between the bladder and the rectum? I don't conceive myself competent to state my opinion; I merely came here to state facts, not opinions.
Why, Sir, you have given your opinion upon Mr. Cooper's skill; and now give your judgment upon the question I put to you; do you believe the forceps did pass between the bladder and rectum? From seeing the parts after death, I saw that the forceps had been violently opened.
That's no answer? Then I did not form an opinion upon whether they passed between the rectum and bladder, or not.
So, then, you are coming here to give an opinion upon the skill of the operator, without forming an idea upon that? I can state, confidently, that the operation was not scientifically performed.
But I must try your science: you state that Wakley and Lambert gave you and the other man very good reasons for believing that the forceps were between the rectum and the bladder, but still you don't believe it, I think? I believe the forceps did pass between the bladder and rectum; I believe that they were in the bladder at one time, but I believe they were once between the bladder and the rectum.
Their reasons have satisfied you, then? No, not their reasons.
Then you can form that judgment without their opinion? Yes.
Now, at what time was that? I believe it was after the first incision.
Now, upon seeing those parts after death, did they exhibit those appearances which would lead you to suppose that that had taken place? I saw a gentleman, of the name of Lambert, distinctly put his hand between the rectum and the bladder.
I know you did; and did you not hear Dr. Hodgkin say to him, "Friend, thou hast done that thyself?" These are the words he used, as near as I can recollect, "He did not like persons to go there to spoil preparations, who had no business with the hospital." I saw him put his hand between the bladder and rectum, and take it up to Dr. Hodgkin, and say, "Here is an opening."
And did you not hear Dr. Hodgkin say, "Friend, thou hast done that thyself?" I did not; but I heard him say, he did not like to see people going there to spoil preparations, particularly those who had no business with the hospital.
Well, when was that; did he not do that when Dr. Hodgkin spoke to him, and said, "Friend, thou hast done that thyself?" I do not know.
When did you see it first? I saw it in Mr. Key's hand.
Well, here is Mr. Key; and now, I ask you upon your oath, and you are a competent judge, was there any space between the bladder and rectum, through which any instrument could have passed, when you saw it in Mr. Key's hands? I did not see it when in Mr. Key's hands, so as to be able to say, for he had the bladder connected with it.
But were you not able to see the cellular membrane between them? I did not, when I saw it in Mr. Key's hands.
Lord *Tenterden*. But this person who put his finger into it, and put his hand

into it, and took it to Dr. Hodgkin, was that Mr. Lambert? It was. (Sir *James Scarlett*. The same man whom he named before.)

Lord *Tenterden*. You did not see Lambert put his hand in? I saw him have it in. That's no answer to my question; I may see a man with his hat on, and yet I may not have seen him put it on? I cannot swear distinctly, whether I saw him put it in or not; I saw him with his hand in, certainly.

Sir *James Scarlett*. And you did not hear any body state that he had done it himself? No; and I don't believe any body could do so.

Did you not hear Dr. Hodgkin say, "Friend, thou hast done it thyself?" No; I did not.

And you do not believe Lambert had done it? I do not.

You have a good opinion of him? I never saw him do any thing dishonourable.

But it would be very dishonourable if he had made an opening in any part to injure Mr. Cooper? Perhaps it might.

Oh, perhaps it might? but did he not state, at his house, that his hand being there, that was a reason why it was to be supposed an incision had been made between the rectum and bladder? (*A pause.*)

Lord *Tenterden*. You are a man of education, and must give answers to the questions; the question was, whether the reason assigned by Lambert, of the fact of the instrument passing between the bladder and the rectum, was not that he had his hand there? That was assigned as a reason.

Sir *James Scarlett*. Well as I can only extract this with so much difficulty, I shall cease this operation which is so very painful to me and to every one.

Witness. It is not at all painful to me Sir James, I shall be very happy to meet your cross-examination as long as you please.

Lord *Tenterden*. But it's very painful to me, to see a gentleman of education not answer the questions directly; I will punish you if you do not.

Re-examined by Mr. Wakley.

There 's no occasion for alarm; pray, answer every thing freely: did I persuade you at Mr. Lambert's to give any information? You did not on any occasion.

Sir *James Scarlett*. Don't be afraid of "The Lancet."

Mr. *Wakley*. Did I not entreat you——

Sir *James Scarlett*. You have no right to ask that.

Mr *Wakley*. Well what did I ask? You, asked me with respect to the report again to say if I could find out any thing in it that was untrue.

Did I endeavour to persuade you to give any evidence of any description whatever? You did not.

Lord *Tenterden*. You say Mr. Wakley did not persuade you to give any particular evidence? He did not, my Lord.

Mr. *Wakley*. Did I use any persuasion to make you alter your belief, on any part you had formed, from the circumstances you had seen? You did not.

Did you come here with an intention of saying one word respecting this operation which is not true?

Lord *Tenterden*. No, no; we must presume he did not, we cannot ask that question.

Mr. *Wakley*. Did Mr. Lambert use any persuasion? He did not; in fact I endeavoured to get off being a witness altogether.

Sir *James Scarlett*. You endeavoured what? I endeavoured to avoid being called forward as a witness.

Mr. *Wakley*. Did I examine you as I have done here to-day? No, you did not.

Did you state to me more than that merely the report was correct? No, I did not state more than that it was correct—no, I did not.

That every part of it was correct? Yes.

Mr. James Lambert sworn. Examined by Mr. Wakley.

Lord *Tenterden*. What's the gentleman's name? James Lambert.

Mr. *Wakley*. You witnessed an operation of lithotomy, Mr. Lambert, in Guy's Hospital in March this year? I did, Sir.

Lord *Tenterden*. The operation, did you witness?

Mr. *Wakley*. Did you witness the operation? I did, Sir.

Did you furnish me with a report of that operation? I did, Sir.

Is this the report you furnished to me? [*Showing the report in "The Lancet."*] It is substantially the same.

Did you assure me upon your honour? (Sir *James Scarlett*. Never mind that.)

Lord *Tenterden*. What did you say?

Mr. *Wakley*. What did you say to me before I would insert it? I stated upon my word and honour it was true, and that it was rather an under-statement.

Speak up? That it was rather an under-statement, than an over-statement.

What do you say now, Sir, with regard to that report? I say that report is true, Sir.

Are you aware of any circumstance in this report, any material circumstance, being incorrect? I am not aware of that either one way or the other; but I have since heard, that instead of Mr. Callaway's holding the stone with the forceps, he held it with his hand; but I cannot speak with respect to that.

How long did the operation last? It lasted more than an hour.

Had you stated an hour? I had.

Lord *Tenterden*. It 's stated an hour. (Sir *James Scarlett*. No, no; the witness states that he did put it an hour, but that the defendant afterwards tempered it.)

Lord *Tenterden*. What was stated in the written paper will speak for itself.

Mr. *Wakley*. It 's destroyed, my Lord.

Did the patient appear a healthy man? He did, Sir.

He did? Yes.

Was he a favourable subject for the operation? I considered him so Sir.

Will you describe the operation as far as you can recollect it; relate it to the jury, and speak loud, if you please? The operation is, I believe, indeed in point of fact is, what is reported there, therefore if I were to repeat it, I should merely give the statement which is there.

The first incision was freely and fairly made, was it? The first was.

At that time was the staff introduced? The staff was then in the bladder.

When the knife and staff were carried forward into the bladder was there a gush of fluid? I saw no distinct gush.

In this report it 's stated the knife was carried on *somewhere*, and somewhere is in italics, where did you suppose the knife was carried? The impression on my mind was, that the knife had not entered the bladder.

Why do you think the knife had not entered the bladder? Because there was not the usual gush which ensues when the knife is carried forward, and the bladder is opened.

What did the operator do then? The operator then asked for his "uncle's knife," and said, I must enlarge the incision: oh, I beg pardon, he first tried to introduce his forceps, and then, finding he could not, he asked for his uncle's knife to enlarge the opening, as he said.

Had the operator removed his finger from the wound at that time, when he introduced the knife? Yes: he had done so before he had introduced it—he re-introduced his finger.

When the knife was introduced a second time, was the staff introduced a second time to guide the knife? No.

It was not? No, Sir.

Lord *Tenterden*. He introduced the knife on his finger.

Mr. *Wakley*. Where were the forceps pushed? They were pushed onwards into the wound.

Were they pushed far? No great way then—not before Mr. Cooper made the second cut.

Did the operator at that time say any thing?

Lord *Tenterden*. What time? (Mr. *Wakley*. At the time he introduced the forceps, my Lord. Lord *Tenterden*. The second time.)

Mr. *Wakley*. Did he say any thing? Not at that time.

Did he say any thing about the perineum being deep? Not at that time.

Did he say any thing about reaching it? About what, Sir?

Feeling the bladder—feeling it with his finger? He said he could not reach it with his finger, a short time afterwards.

Was the staff re-introduced? It was at a subsequent part of the operation more than once.

Do you recollect what instrument was used next? The gorget was used next.

The cutting or the blunt? I cannot state distinctly, but the impression on my mind is that the cutting gorget was used first.

What forceps were employed? Various kinds.

A scoop; was a scoop used? A scoop was used.

Lord *Tenterden.* Was that after the stone was extracted? No, my Lord.

Before? Before the stone was extracted.

Mr. *Wakley.* Were sounds introduced into the opening in the perineum? They were.

Staves? Yes.

Did the operator say any thing respecting the delay? He said he could not explain the difficulty, or could not conceive the cause of the difficulty, I don't know which.

Was that said in the presence of the patient? It was said audibly to the pupils.

In the hearing of the patient? Yes.

Did the operator say any thing to Mr. Dodd? He asked Mr. Dodd if he had got a long finger.

Did the operator say any thing respecting touching the stone with the sound? He said he could feel the stone when he passed the sound through the wound in the perineum, but he could not feel it with the forceps.

Did the patient make any complaints? The patient repeatedly begged to be released.

Was the stone extracted at last? It was.

When seized with the forceps at last, did it come out without difficulty or with difficulty? It came out without any extraordinary difficulty more than is usual in the passage of a stone through a wound.

Was it a large or a small stone? It was of a moderate size.

Did you see the parts? I saw and examined the parts after they were removed from the body.

Will you state, Sir, what you observed, and who was present at the time? When I went into the demonstrating-room——

Lord *Tenterden.* Into the what? The demonstrating-room, my Lord.

Why do you call it the demonstrating? The place where all these parts——

Lord *Tenterden.* Yes, yes; you need only say the room where the parts were: well? Several pupils followed me; I saw the body of the patient lying on the floor.

Lord *Tenterden.* Then you saw the dissection, I suppose? I did not; I looked at the perineum.

Was the body then dissected? The parts had then been removed from it; the morbid parts—the bladder and prostate had then been removed from the body.

They were removed before you went in? Yes, my Lord.

Mr. *Wakley.* State all you saw, if you please? I then asked to see the morbid parts, and they were shown to me; I attentively examined them in the presence of several pupils; my attention was of course principally directed to the examining of them, as to any difficulties or any morbid appearances that might have given rise to any difficulties in the operation. (Lord *Tenterden.* Go on, Sir.) I found the prostate, the gland itself slightly larger than natural—slightly larger than ordinary; I found on the right side of the gland a smallish oblique cut.

Mr. *Wakley.* On the *right* side of the gland? Left side of the gland, I should have said: the parts appeared to be ecchymosed; they seemed to have been bruised a good deal—looking dark—the cellular membrane——

What parts? Around the prostate and neck of the bladder.

Lord *Tenterden.* Prostate did you say? Yes, my Lord.

Well? On the anterior surface of the bladder, on the anterior part of the neck of the bladder, that is to say, on the floor of the neck of the bladder there was a very singular appearance; there was a little projection of about the size of the tip of my little finger; this I took to be, as Dr. Hodgkin described it, an enlargement of what is called the third lobe of the prostate gland; I continued my examination, and I found, on turning over the preparation, in passing my finger on the anterior part of

the bladder, that my finger passed up with the greatest facility between the bladder and the rectum.

Mr. *Wakley.* Now, Mr. Lambert, let me entreat your attention to this point: I ask you, on your solemn oath, did you make use of the slightest force in passing your hand up between the bladder and rectum? (Lord *Tenterden.* Fingers—finger.)

Mr. *Wakley.* In passing your finger up between the bladder and rectum? Upon my oath I did not, Sir.

Did you break down any structure in passing your finger up? I did not, Sir.

Do you swear most positively that you left the parts in the same situation as you found them? I must be allowed to explain here: I was going on with the examination, when Dr. Hodgkin, the demonstrator and curator of the hospital, came to me very angrily—I had pointed out this to the pupils, my finger being between the bladder and the rectum.

Lord *Tenterden.* Came up very angrily? And said, "I wish people would not come here, who have no business, to pull things about."

Mr. *Wakley.* Who said this? Dr. Hodgkin, and he said that somebody had broken down that little fungous growth which I have described.

Lord *Tenterden.* Broken down that little fungous growth—is that what you say, Sir? Little fungous body.

Dr Hodgkin said? Dr. Hodgkin said that somebody had broken it down: I was conscious that I had never touched it—I merely looked at it.

Well, go on, Sir? Accordingly I followed him out, having been many years about the hospital and never having had any complaint made against me, and assured him on my word that I had simply examined the preparation, and had used no violence whatever with it.

Mr. *Wakley.* Who was present, Sir, when you examined the preparation? I don't remember any one else but Mr. Pearl: there were several pupils present, but I don't remember the names of any one else except Mr. Pearl.

How many do you suppose? Five or six; I hope I may be allowed to say, my Lord——

No, no, no: do you know Mr. Brainsford? I do, Sir.

Did you see him there? I cannot say he was there; he has told me he was there.

Did Dr. Hodgkin say any thing with regard to the perineum of the patient? He said it was not a deep perineum.

In whose presence did he make that statement? The same pupils: I think his expression was—there 's nothing remarkable about it, that is, as regards the depth of the perineum.

Did Mr. Key make any statement respecting the perineum? He said the patient had not a deep perineum.

What said Mr. Key? Mr. Key said, in the square of the hospital, in the presence of fourteen or fifteen pupils, that the patient had not a deep perineum.

Lord *Tenterden.* Thirteen or fourteen pupils, is that what you said? To the best of my belief.

Well; speak aloud, Sir.

Mr. *Wakley.* Did Mr. Key say any thing respecting the abilities of those persons who had stated the patient had a deep perineum? I said to Mr. Key, it seems to me your staff, the staff you have invented, will never do where there is a deep perineum, and I never saw it fairly tried before in a deep perineum; assuming it was a deep perineum, according to what the operator had said.

I ask what Mr. Key said? Yes, Sir; but I must first tell you what I said: Mr. Key said that he had not a deep perineum, and if I said so, I knew nothing about it.

Did you see any thing in any part of the preparation to account for the delay in the extraction of the stone? I certainly did not, Sir.

Did Dr. Hodgkin state that the bladder could be reached easily with the finger? No, Sir.

He did not? No, Sir.

Did you ever examine a perineum in which you were unable to reach the bladder with your finger? Never, Sir.

What do you suppose to be the usual distance from the tuberosity of the ischium

to the prostate? I have measured it, and found the ordinary distance—the medium —about two inches, and that I think, to the base of the prostate.

Lord *Tenterden*. How much? (Sir *James Scarlett*. About two inches and a half.)

Mr. *Wakley*. Two inches: it is stated here, that the bladder could be easily reached when the man was dead, from the perineum with the finger; how do you know that fact? I looked at the man, and saw what kind of perineum he had, and saw the slight enlargement of the prostate, and that was my impression; I did not actually ascertain the fact when the bladder was in.

Lord *Tenterden*. Your impression was that the bladder could be reached? Yes.

Mr. *Wakley*. Could you discover any thing in the post-mortem examination, to account for any of the delay in the operation? I did not.

Was a cutting gorget introduced? It was.

Lord *Tenterden*. Well, now you are going back; he has said something about that.

Mr. *Wakley*. I believe he did, my Lord.

Lord *Tenterden*. No, he did not say that.

Mr. *Wakley*. In what position was the instrument held when introduced? It was held, as it regarded its blade, nearly horizontally.

Did you see in the neck of the bladder and prostate gland an incision similar to the form of the gorget? I did not.

If the gorget did not pass into the bladder, where was it likely to pass when introduced? Between the bladder and the rectum; I have seen it repeatedly pass there.

By whom have you seen it repeatedly pass between the bladder and the rectum when they have been operating? I don't know whether I ought to state that here, as a censure on the operators present.

Well, have you ever seen the gorget passed between the rectum and bladder by a skilful operator? Never, Sir.

Or by a person having any pretensions to skill? Certainly not.

Was the gorget used subsequently to the knife? Subsequently to the use of both knives.

How many times had the knives been introduced? I don't recollect their having been introduced more than twice.

Do you mean twice each, or once each? Once each.

How many times was the cutting gorget introduced? I cannot speak to its being introduced more than once.

Was the blunt gorget used? It was.

Did you ever see an operation performed in a similar manner to this? Never, Sir.

Did the operator appear in a state of self-possession? Certainly not, Sir.

Do you believe the patient could recover after such an operation? No.

Have you seen Mr. Cooper operate on other occasions? I have, Sir.

Is he a good operator? I should say not.

Have you seen him perform any operations which you would call skilful operations? Yes, Sir, I saw him once tie the subclavian artery very quickly, and well performed.

Is that operation difficult to a man who has any nerve? Certainly not.

Sir *James Scarlett*. Speak up, Sir? No, Sir.

Mr. *Wakley*. Do you consider that Mr. Bransby Cooper's surgical abilities are adequate to the duties of the office of surgeon in Guy's Hospital? I certainly do not.

Cross-examined by Sir James Scarlett.

Are you a surgeon, Mr. Lambert? Yes, Sir.

How long have you been a surgeon? I have been in the profession about thirteen years.

And no doubt you consider yourself as much more competent than Mr. Bransby Cooper, do you not? I do consider myself more competent than Mr. Bransby Cooper, certainly, Sir.

Why should you mince matters; you consider him totally incompetent? I have already said I consider him incompetent.

Totally incompetent? Yes.

A disgrace to the situation he holds? I have not said that, Sir.

But he must be if he is totally incompetent: when you say you have been in the profession for thirteen years, I don't understand that; do you mean to say you have been practising the profession for that time? No, Sir; it's thirteen years since I first entered it as an apprentice.

How old are you now? Twenty-eight.

How long is it since you began attending the hospitals? About six years ago.

And when were you admitted a surgeon? About three years since.

Are you practising now on your own account? I am, Sir.

This is not the first communication you have made to "The Lancet," is it? No, Sir.

By a great many? I have contributed to "The Lancet," Sir.

Ay, very largely, I presume? I have been a constant contributor for some time, Sir.

Do you derive any emolument from it? I did, Sir.

You did? Yes.

You don't now? I do not, Sir.

Did you derive any emolument during the period of your contributions? I did.

Considerable? Paid handsomely.

Paid handsomely; probably better than the practice of surgery: did you not derive a larger income from that than you have ever done from your practice of surgery? No, Sir.

You did not? No, Sir.

You have been intimate with Mr. Wakley, then? I have, Sir.

Were you paid by the job, or by the year? I had a distinct income to furnish a certain quantity of matter; and after that, when I furnished any thing, I was paid for it.

I beg to know what you received, in every way, for what you did? I don't know whether I am to answer that.

Lord *Tenterden.* Yes.

Sir *James Scarlett.* I assure you, I mean to probe your veracity to the bottom? I used to receive eight guineas a month.

And all you exceeded in supplying the quantity that was for that, you were paid for in proportion? Yes.

Was the proportion measured by the quantity of matter? No.

How was it measured? It was an agreement that I should give an article, it did not matter whether it was long or short, upon a certain subject weekly.

Do you mean besides the stipulated contribution? No, Sir.

But I am speaking of that which was beyond it: you received the eight guineas a month; how was the excess paid for; was it paid by the line? It depended a good deal on Mr. Wakley.

Depended upon his pleasure? Yes; there were some that were distinctly understood—if it was a well finished article.

Lord *Tenterden.* What was it? It depended on the length.

That's what was asked? I mean as to what exceeded.

Sir *James Scarlett.* Yes; if you gave any thing beyond the weekly contributions, did it depend upon the length of it? If it was a book that was to be noticed, and required great trouble, I got more for it, even if it was but a few lines.

When did you first begin to contribute to "The Lancet;" when it first set up? No, Sir.

How soon after? I cannot say distinctly.

Was it a month, or a week, or a year? I think "The Lancet" must have been established two or three years before I began.

The work is celebrated for its severity: I don't say unjustly, mind; but for its severity and sharpness—a clever work? It is said to be so.

There's a great deal of pointed satire and personal attack in it, is there not? No personal attack, Sir.

Oh! no personal attack: no persons attacked by name; that is what you mean, I suppose? No; except where he is a public functionary.

Lord *Tenterden.* Then we must have what you mean by a public functionary.

Sir *James Scarlett.* Oh, a public functionary is a watchman in the street; well,

these attacks on public functionaries make it a good work, and circulate it well? It has a great circulation.

Well; that's the cause of it? I cannot say that.

Don't you believe that persons are gratified with a little personal attack, provided they are not the subjects of it themselves; you have not experienced enough to know that yet? No.

Is the circulation very profitable to Mr. Wakley? I should think it is.

Five thousand or six thousand pounds a year? I don't know.

He maintains a handsome establishment? Yes.

Does he practise as a surgeon? Occasionally.

Is his income derived from this work? I presume his principal income is principally from this work.

Now, Sir, attend to this question: did Mr. Bransby Cooper ever threaten to turn you out of a room on one occasion? I never recollect that.

Well, I will give you a little time to recollect it: did he never threaten to turn you out of a room?—[*a pause.*]—eh!—[*still pausing;*]—what do you say? Yes; I remember, at the occasion of Guy's dinner, on which Mr. Bransby Cooper addressed me angrily, but I cannot say whether he said that or not: there was a great noise.

Well, now come, my question is not to a particular time or place: did he never threaten to turn you out of a room? I cannot say that; there was some angry altercation.

What was it about? It was at a dinner.

What was it about? I objected to a toast that was given, and he came from the chair, with others, and addressed me, thinking that I had disturbed the harmony of the meeting and I left the room.

Oh! you left the room; he did not turn you out? No.

Why did you leave it? Because I saw there was evidently a very strong feeling against the measure I had adopted.

When was this? I cannot say; it's two years ago.

Well, now you have mentioned that circumstance, I will come to another; had you never any difference with Mr. Bransby Cooper before or after that; I shall give you time to recollect it? I don't remember any quarrel.

O no, but quarrel, quarrel! I don't mean that you came to blows;—do you never remember Mr. Bransby Cooper saying, "Sir, you must leave the room, or I must leave the room, unless you make me an apology?" No, Sir.

I believe the popular name by which you call the hospital surgeons in this work is *Bats*—(*laughter.*)—is it? The word is used.

Lord *Tenterden.* Is it used? It is.

Sir *James Scarlett.* That's the name; the nickname—*Bat*—a *Bat*: now, attend to me, I have brought that word to your recollection; do you never remember any angry words with Mr. Bransby Cooper respecting that word as applied to him or hospital surgeons? I do recollect it.

Well, you do; where was that; was it in the lecture-room? I think it was over at St. Thomas's Hospital one day.

In the lecture-room? I think not.

O, if you recollect a little more, I think you will be able to assign the place? I cannot state where.

Was it not on that occasion, Sir, that he said, "You must make me an apology, or you or I must leave the room?" I distinctly swear I do not remember his saying it.

Do you remember ever making him an apology? I remember using the word *Bat* in speaking of a trial, and I had no hesitation in saying that I did not mean it to apply to him, and had no personal intention in using it.

Did you make him an apology? I did say that I did not intend it to be personal.

Did you not say afterwards that you would watch your opportunity, and make him repent it? I don't remember ever saying so.

Will you swear you did not say so? I will swear, to the best of my recollection, I never did.

Will you swear you never said that you would watch your opportunity, and make him repent it? I will swear, to the best of my recollection, that I never made such a statement.

Might you not have made it, and forgot it? I may: I am a man of warm feelings, and I may have said many things in the course of my life which I do not recollect, but I do not know that I ever said so.

As you are a man of warm feeling, do you think it's possible you could say so? I don't think it is possible; I have no such impression on my mind.

I am not asking that, I will try that by other tests: on your oath I desire to know whether, upon your oath, you said, I will try to make him repent it? Upon my oath I never recollect having used such words.

Then you would swear to us that you don't recollect it? Yes.

Then when was it this affair happened as to the bats? I cannot speak of the time.

But about the time: you said it was about a trial here, probably it was not twelve months ago; it was before the month of March last? I cannot say.

Recollect, Sir: was it not before the month of March last? It was.

Was the dinner you speak of—was that two years from that time? I believe this is about the time of Guy's dinner.

Well, Sir, was it not at the last anniversary that that circumstance took place? No, two years ago.

Is January not the month? Some time about Christmas.

Perhaps you did not go to the last? I have never been but to one, Sir.

And then you went away, but you were not turned out? Yes, Sir.

Now we will come to particulars: you carried this report to your friend Mr. Wakley—was this one of the weekly contributions, or exceeding? This was one of the weekly contributions—yes.

Then it fell within the eight guineas? Yes.

Is it true the report was rather more severe than it is in this report? There were one or two expressions rather more severe.

More severe than he thought it right to publish? Yes.

Well, did you indemnify him? I assured him.

You assured him they were true, no doubt, and would justify it? Yes.

Pray, was the report much longer in your manuscript than in its present form? Oh, no.

I should like to know the expressions, for we may as well have the whole of a good thing? The principal alterations were with respect to the time; I had stated it was rather more than one hour, and Mr. Wakley said he would rather be under the mark.

What was the other? I don't remember any thing else.

Nay, was it simply the alteration of the time—I thought you said there were some observations more severe than what is in this report? That was with respect to the time; there were some observations coupled with the length of time.

Well, perhaps the time we may not think so severe as you thought it; but were there no other observations altered in it except that? No, Sir.

When did you see the manuscript last? I did not see it since it was printed.

Pray, did you write the next attack on Mr. Cooper in the next number? I did not, Sir.

Nor any part of it? No, Sir.

Now, just one word about the operation: if I understood you right, you gave as a reason for doubting at least whether the knife had reached the bladder the first time, that you saw no gush of urine; is that not so? Yes.

You think that a very fair reason for judging that the knife had not reached the bladder? Yes.

Did you see a gush of urine at any other time afterwards? No, I did not.

Well, now as a man of skill, how do you account for that; you admit it reached the bladder at last; explain that inconsistency? I can only explain that by saying, that as the knife was carried on I did not see a gush; the impression on my mind was, that it had not entered the bladder.

Exactly: when did the gush of urine take place? I saw no gush.

Well, then, according to you, you don't believe the knife got into the bladder at all? I believe a small opening may have been made into the bladder, through which a small quantity of urine issued, with some of the blood.

He said, "give me my uncle's knife:" I understand you will swear you have no doubt about that? I have some doubt about that; whether he said my uncle's knife, or Sir Astley's knife, I am now not quite sure; some of the witnesses say that he said Sir Astley's knife.

Have you not asked them in taking their evidence in writing? Yes, Sir, under the direction of Mr. Wakley.

I don't care under whose direction: and it's from what you have learned among your own witnesses, that you are now led to doubt whether it was my uncle's knife, or Sir Astley's? I forget now how it was, I first had the impression on my mind that he said so.

Why, you made the report, will you not swear to it? No, I won't.

If he said Sir Astley, why did you say my uncle? Because Mr. Barnsby Cooper is so much in the habit of using that expression.

Oh, you thought it was much more striking—much more characteristic of Mr. Bransby Cooper to put it in in that form? Yes.

Did you supply Mr. Wakley—for I must consider you as learned as himself—with the quotation from Mr. Bell's work that was appended to the report? Yes.

You are sure you understood the meaning of it? Yes. (Lord *Tenterden*. What was that? Sir *James Scarlett*. A quotation, my Lord, from Mr. Bell's work upon surgery, about "long and murderous operations.")

Now, as you gave this report like a man of honour to the profession, you intended to convey the impression that Mr. Bransby Cooper had *murdered* the man? I did not say that.

No, you did not say it; but I ask you whether you intended to convey the impression that he had murdered the man for want of skill? I intended to convey the impression that the patient had lost his life for want of skill.

Well, I have no doubt you thought this a good time to take the opportunity of destroying a man's reputation, besides getting the eight guineas? No, I lamented over it.

Oh, you lamented over it, and thought it not to be treated with ridicule at all? I did not think it was a subject for ridicule.

Did you put that note at the bottom of the report, that the man said that he had come to "town to be operated upon by the *nevey* of the great Sir Arstley?" Yes, Sir.

Did you write this note? It was added after the report was written.

It was; by yourself? Yes.

You heard him say so? Yes.

You saw him before the operation? Yes.

Do you happen to know whether Mr. Bransby Cooper wished the operation to be postponed? I cannot say.

Do you know who sent the man to Guy's Hospital? Mr. Hodson, of Lewes—if I may correct myself, I believe the overseers of the parish did.

Then did you not know that Mr. Hodson of Lewes refused to perform the operation? No, I don't.

Were you there? I was there to see my brother.

Now do you know what happened to Mr. Clapham, a licentiate of the Apothecaries' Company? I know him.

Do you know that he has passed the hall, Sir? Yes.

Has he obtained his license? Yes.

Is he a relation of yours? Yes.

What relation? A cousin.

Did you assist him in procuring his license? No, Sir.

Are you sure of that? Yes.

Did you know that he was going to procure his license? No; I was astonished at it; he came down to me one morning and told me—I did not know he was preparing for it.

And did you know he was under age? No.

How many bets have you laid on this trial? None.

Have you never offered any? I may have said something about it.

Have you offered any bets? No, Sir; I may have said that the odds were so and so, but I never made any bets.

You may have said the odds were so and so? Yes, Sir.

Then do you mean to say you have said so? Yes.

Then you knew what the odds were? I knew we had a great number of good witnesses.

There were no bets laid then? No.

You say *we* had a great number of good witnesses, and you thought *we* would win? I thought the cause would go for us.

How many were the odds, for I should like to know? I really don't recollect.

Whether it was two to one or three to one? No, I cannot swear that even I made the remark; I may have said—I might have said so.

Lord *Tenterden.* You said so?

Sir *James Scarlett.* You said so: have you not said or not, that the odds were in favour of *our* winning the cause? I cannot distinctly swear about it, but I think I may have done so

Have you any doubts about it? Yes, I have some doubts about it.

Well, but as you treated the cause something like a horse, you know that when you want a horse to win, you take pains to bring him up—did you not do that here; have you not taken pains to get this cause up? I have taken pains to collect evidence.

You have examined a great many witnesses? I have examined several.

Have you had them at your house? Two or three have called at my house.

Only two or three? I don't remember more than three of the witnesses having called at my house.

Pray, at what other place have you seen them? At the anatomical theatre.

Where is that? In Webb Street.

Who keeps it? Mr. Grainger.

Mr. Grainger has a *cheap* theatre there, has he not? I don't know that he has a cheap theatre—it 's a respectable theatre.

How many at a time have you had there? I have been talking to different witnesses in that room about the cause.

How many at a time have been there when you have been discussing the subject, or training the horses, in other words? Several of our witnesses.

A dozen? No, Sir.

Was Mr. Wakley there? He has been there.

Had you a model there? Yes.

Was a lecture given upon it? No, Sir.

Now attend to me, Sir; has no lecture, or any thing in the shape of a lecture, been given upon the model of this specific operation, for the purpose of proving Mr. Bransby Cooper's want of skill? I don't know that there has been, nor had I ever seen the model.

Was the model not there? It was taken one day, I believe, and the next it was removed to Mr. Wakley's house.

Now, whether it was or was not, were you not there when a lecture was given? I have been present when the perineum has been demonstrated by Mr. Grainger and Mr. Pilcher.

With a view to this cause? I don't know.

Upon your oath, Sir, was it not? I believe Mr. Grainger knew of the cause.

Now, I won't confine myself to the model—you had a dead subject there? Yes.

Well, I ask, upon your solemn oath, if the lecture was not given with a view to this cause? I assure you I do not know; I heard of Mr. Grainger having given one, I did not hear of it till after it was over, on the anatomy of the parts; I heard Mr. Grainger and Mr. Pilcher both speak of the parts, but I was not present at that set lecture.

Oh, that *set* lecture; but have you been present at no time when a lecture was given with a view to this cause? I have said I have been present when a demonstration was given.

With a view to this cause? Yes.

Then why don't you say so at once; have you ever doubted it? No.

Have you done it yourself? I have shown it.

Have you demonstrated it to those around you with a view to this cause? I have shown it to those in the room.

Have you not demonstrated the parts to the persons in the room with a view to this cause? No, I have not; I have gone down to that room and examined the parts repeatedly.

Lord *Tenterden.* You are not asked that; you say you have explained the parts in the room, and the question is, whether you have done that with a view to the evidence in this cause? It was knowing they were to give evidence——

That's no answer?

Sir *James Scarlett.* Was it not with a view of giving those around you more knowledge? It was with a view of refreshing my memory upon it.

Lord *Tenterden.* You are asked, was that not done with a view to their information?—that's the question you are asked, and you must answer it yes or no? My Lord, I am sorry to give trouble, but the expression with a view to their evidence in this cause, seems that I must have said something importing that, and I cannot admit that it was done with a view to their evidence in this cause.

Sir *James Scarlett.* With what view was it then? I have gone down there, and I may have made observations.

With the witnesses present? Some on both sides present.

Well, but I believe they did not all believe your science; did you not explain to them the parts with a view to this cause? I explained these parts to them, but not with a view to this cause.

Why did you go there yourself? I went with a view to refresh my own memory.

Was Mr. Wakley present? I have met him there on two occasions.

Was he present on any occasion when you were making these exhibitions? No, Sir.

Do you mean to swear that? I don't remember that the day he was there, there was a perineum dissected, Sir.

I don't care for that, was he ever present when you were making the demonstrations? I declare, to the best of my belief, I do not think he was.

Did you ever hear him explaining them? Yes.

To the pupils? To the pupils.

Were there any present that were to be witnesses? Some of them were to be so, I believe, on both sides.

Now, was it you that said, or did you hear him say, that Mr. Bransby Cooper murdered that man as much as if he had cut his throat with a knife? I don't remember the words being used.

Will you swear they were not used? I cannot swear either one way or the other.

Could those remarkable words have been used without your remembering them?

Lord *Tenterden.* Could you swear he did not use them?—this is fencing in a way most unbecoming—you do not answer any one question directly? I cannot swear he did not use them, for I was not in every part of the room with him, but I will swear he did not use them in my hearing.

Sir *James Scarlett.* Or used words to that effect? Or used words to that effect.

Can you swear, Sir, that you did not use words to that effect? No, Sir.

Now, how many days ago is it since you used words to that effect? I may have expressed myself in the dissecting-room to the effect that the patient lost his life by the operation, and that is not more than ten days ago.

But did Mr. Grainger lend his theatre for the purpose of having these demonstrations made? Not to me; no, certainly not.

How came you there? I am a perpetual pupil there.

I thought you were an admitted surgeon? I am, but I paid down a certain sum there, by which I became a perpetual pupil, and am entitled to go when I please.

Well, now, how many times have you heard lectures and explanations given to persons who were to be witnesses on this cause? Several times.

But how often? Four or five times.

Within this last month? Within this last six months.

Have you heard them at Mr. Wakley's house? No.

At your own house? No.

At the theatre? One at the theatre.

Was Pearl there? On some occasions he was.

Was Clapham? No, Sir.

Was Gilbert? No, Sir.

Lord *Tenterden*. Who did you say was in the room? Mr. Pearl.

Sir *James Scarlett*. I think, Mr. Lambert, then, that for the purposes of justice you have displayed a good deal of zeal in this cause, and—(Lord *Tenterden*. No, no; why not ask your question?) Having been author of the report, I felt it my duty to collect the evidence in support of it.

Sir *James Scarlett*. Then I will beg to ask you, were you seated near? I stood very close to the operator.

Where? On the left-hand side.

Lord *Tenterden*. Then you were not with the pupils? I stood below.

Sir *James Scarlett*. You stood in the area? No, I stood just outside the bar.

Oh, there 's a bar between you and the operator? Yes.

Now, if you please, we will come to the post-mortem examination. You say, you went to Mr. Key, and said to him, "Your straight staff won't do in a deep perineum;" that 's what you said, you know; you have already stated that? Yes, yes, Sir.

Now, Sir, tell me if Mr. Key did not say, in answer to that, "You know nothing about it; I have operated on a perineum twice as deep, with a straight staff?" I believe Mr. Key did tell me I knew nothing about it, but I don't recollect his telling me he had operated on a perineum twice as deep with a straight staff.

Well, do you know enough about it to know that a deep perineum goes against the straight staff? Yes.

You said you had never seen it before? The straight staff by Mr. Key, I said I had never seen fairly tried before.

Then I ask you whether he did not say it had nothing to do with the perineum? No.

But that you knew nothing about it? Yes.

Now, I observed afterwards, that you said, Dr. Hodgkin said it was not a deep perineum, but then you afterwards qualified that, and I want to know what he really said? In a subsequent conversation with him, I conversed with him upon it, and he said, "There is nothing remarkable about the perineum."

Then he did not use the words, "It was not a deep perineum?" He had said that previously.

Oh, he had? Yes.

Did you furnish that happy epigram about Sir Astley and his nephew, that appeared in a subsequent number of "The Lancet?" No.

You are sure of that? Yes.

That is not one of your stipendary contributions, then? No.

Does Mr. Wakley own himself as the author of that? I don't know whose it is, Sir.

Re-examined by Mr. Wakley.

Mr. Lambert, I am sorry that you should have shown any hesitation in giving your answers, for there is nothing in Sir James Scarlett to be afraid of, and there is nothing to conceal, therefore don't be afraid, speak out, and answer every thing.

Sir *James Scarlett*. I beg your pardon, I just want to ask another question.

Did you attend the operation of lithotomy, afterwards, at Guy's Hospital? No, Sir.

Have you never seen one there since? No, Sir.

Have you been allowed to attend? No, Sir.

Lord *Tenterden*. You have been refused? Yes, my Lord.

Sir *James Scarlett*. Were you ever turned out of any other hospital? I left the Middlesex Hospital.

That 's no answer; were you turned out of it? Yes.

How long ago? Four years.

And St. Thomas's? I am not allowed to go to St. Thomas's in consequence of this report.

In consequence of this report? Yes, Sir.

Mr. *Wakley*. Were you the apothecary at the Middlesex Hospital? Yes, Sir.

Were complaints made against you, that you were the reporter to "The Lancet," at that hospital? Yes, Sir.

Was any other charge made against you, than that you were reporter to "The Lancet?" No other charge, Sir.

Were you ejected from that institution upon the ground, solely, that you had sent communications to "The Lancet?" Yes, Sir.

Now, Sir, I ask you on your oath, did you ever send a single report from that hospital before you were ejected from it? No, Sir.

Or afterwards? No, Sir.

Then was the accusation entirely false? It was.

When you spoke of the *odds* respecting this cause, what did you mean by it? I meant, that in consequence of our having had, as I considered it to be, a great deal of good evidence, that the chances were very much in our favour.

When you spoke of the odds, did you know of a single bet having been made respecting this cause? Certainly not.

Have you heard me offer any bet on it? No, Sir.

Have you offered any bet? No, Sir.

Is Mr. Grainger's Theatre of Anatomy of high repute? Very high repute.

His school of anatomy is of high repute? Very high repute.

Is it cheaper than the school at Guy's Hospital? I believe it is.

Do you believe the information to be obtained there to be inferior or superior to that obtained at Guy's? Yes, superior.

Lord *Tenterden*. No, no, you can't ask that, Sir. (Mr. *Wakley*. My Lord, there is an attack made on this school —— Sir *James Scarlett*. That he made it a school for your lectures, not that there is a want of science in Mr. Grainger.)

Mr. *Wakley*. Do you know of any request made on my part for the use of his theatre? Certainly not.

Do you consider that he has lectured to any witnesses of mine only, and not also to Mr. Bransby Cooper's? (Lord *Tenterden*. No, no; we must not have that.)

Do you consider that those lectures were delivered to the class? Yes.

If you were going to give evidence on a piece of machinery, would you not endeavour to get all the information you could respecting its mechanism? Certainly.

Was the information common to the whole of the pupils, to Mr. Bransby Cooper's witnesses as well as to mine? To the whole of the class.

Sir *James Scarlett*. How does he know the lectures were to Mr. Bransby Cooper's witnesses? (Lord *Tenterden*. He says to the whole of the class.)

Mr. *Wakley*. Were the doors closed against any gentleman or set of gentlemen? Certainly not.

Did you hear Mr. Grainger say, he was anxious his pupils should not exhibit a want of knowledge of anatomy—that he was anxious they should know anatomy before they came into this court? I cannot say I heard Mr. Grainger himself say so.

Were several of Mr. Grainger's pupils subpœnaed on the other side? Yes, I heard they were.

You were asked respecting a model exhibited at Mr. Grainger's dissecting-room, where was that made? It was made in the yard, publicly.

Lord *Tenterden*. What yard? In the yard of the theatre.

Mr. *Wakley*. Was the cast, in point of fact, taken from a child in the lecture-room? It was.

Did you see it there, after it was taken by the man? I did not.

Do you know that I saw it there? I do not know that you did.

Mr. Alexander Lee sworn. Examined by Mr. Wakley.

Where do you reside? No. 14, Bridge-street, Borough.

Are you a friend of Mr. Bransby Cooper's? I am not intimate with him.

Speak up? I am not intimately acquainted with him—I never spoke to him. (*Laughter.*)

Are you a surgeon? I am.

How many years have you been in practice? Five years.

Did you see the operation of lithotomy performed at Guy's Hospital by Mr. Bransby Cooper? I did, Sir.

How was it performed, Sir? In the usual manner; it was a tedious operation—a long tedious operation.

When you say in the usual manner, Sir, do you mean that Mr. Bransby Cooper's manner of performing the operation is the usual manner of other persons? It was the first time I ever saw Mr. Bransby Cooper operate for lithotomy.

How many times have you seen the operation of lithotomy performed, Sir? I don't know.

Can you form any opinion? I should think from 50 to 100 times.

How long have they generally lasted? Five, ten minutes, a quarter of an hour, and it 's impossible to say the average.

Have you ever seen one last a quarter of an hour? Yes.

What were the circumstances in that case which produced the delay? The difficulty of extracting the stone.

Yes, but from what cause? I don 't know; it might have been a contraction of the bladder; on the introduction of the forceps into the bladder it will contract, and that might be the cause.

I did not hear you? (Sir *James Scarlett.* A contraction of the bladder, which sometimes happens upon the introduction of the forceps into it, that's what you said.)

Mr. *Wakley.* Does not the bladder always contract when the urine escapes;—does the bladder contract, or does it remain in a state of relaxation when the urine has escaped? I should think it does, Sir.

Does what? Contracts.

Are you aware of the circumstances which produced the delay in this case? I am not.

Of no circumstance? No.

Did you see the whole of the operation? I came before; I saw the whole of the operation; I saw the whole of the operation; I did not examine the stone.

But you saw it extracted? I saw it extracted.

Were the different instruments introduced which are mentioned in "The Lancet?" Yes, I think they were.

Was the operator cool and collected during the performance of the operation? I could not see any material difference; I was not at the operating table; I was some distance from the operator.

Well, Sir, did the operator carry the knife and staff towards the bladder? Not in the first instance.

He did not; what did he do? The incision, the first incision was made in the usual manner; but, perhaps, the incision into the bladder was not sufficiently large.

Would the opening made into the bladder, the first time the knife was introduced, admit the point of the forceps? That's perhaps a matter of opinion, on account of the distance I was from the operator.

Were the forceps introduced into the bladder at the first attempt? I am not sure.

Did the operator, after attempting to introduce the forceps, re-introduce his knife and make another incision? Yes.

Had he at that time laid hold of the stone with the forceps? I think not.

I cannot hear you, Sir? I think not.

In point of fact, before he had made the second incision with the knife, was the staff re-introduced? I did not hear the first part of the question.

Was the staff re-introduced before he made the second incision with his knife? I'll not undertake to say; the staff was re-introduced, but whether he made a second incision I am not prepared to say.

Did Mr. Cooper use a cutting gorget? Yes, in the latter part of the operation.

Did you, in any other operation of lithotomy you have ever witnessed, see the gorget introduced after a knife had been applied three times? (Sir *James Scarlett.* Nobody has sworn that yet.) Most of the operations I have seen have been in Paris; I have seen more in Paris than in London; there they use different instruments.

After the knife had been used twice, have you, either in Paris or in England, seen the gorget used to cut into the bladder? No, I have not.

Is the gorget ever used with any other view than that of cutting into the bladder? No, not that I am aware of.

How long did this operation occupy? I suppose more than half an hour.

Did it last an hour, Sir? I cannot tell exactly, but I believe it lasted more than half an hour.

Will you swear, Sir?—— (Lord *Tenterden.* Your own witness! Mr. *Wakley.* I know, my Lord: will you swear, Sir, that it lasted less than an hour? Lord *Tenterden.* That it lasted an hour?) I think not.

Mr. *Wakley.* Now, Sir, pray be particular; will you swear the operation lasted less than 55 minutes? I did not mark the time; but from the recollection I have, I have no hesitation in saying, that it lasted more than half an hour.

But will you take upon yourself to swear, it lasted a less time than 55 minutes? I really did not mark the time, therefore it might be, from the report of "The Lancet"—— (Lord *Tenterden.* But we must not take the report of "The Lancet.") I have no hesitation in saying, that it lasted from half an hour to 40 minutes; it might be a little more.

Mr. *Wakley.* Will you swear, Sir, it did not last an hour? (Sir *James Scarlett.* You have no right to cross-examine your own witness in that way.)

Mr. *Wakley.* Then, Sir, was the operation scientifically performed? I am not prepared to give an opinion of that importance.

Which of the two do you consider the best surgeon, Mr. Callaway or Mr. Bransby Cooper? Mr. Callaway, Sir.

Mr. Callaway? Yes.

Lord *Tenterden.* It 's hardly fair to ask that. (*Witness.* I believe it's a very invidious question, my Lord. Sir *James Scarlett.* That it certainly is. Mr. *Wakley.* These are very invidious actions altogether.)

Do you consider that Mr. Bransby Cooper is qualified for the office of surgeon of Guy's Hospital? That's a question too I think—I submit I should not answer such a question—its importance——

Will you answer it, Sir? I submit to my Lord, whether I should draw such a comparison with a view—I am not fit to judge.

Have you stated, Sir, that the report in "The Lancet" is correct? (Sir *James Scarlett.* Has he stated that it is correct; my Lord, I must object to that; you may ask if it is correct.)

Mr. *Wakley.* Is the report in "The Lancet" correct or incorrect? Generally speaking it is.

Generally speaking, it is? (Lord *Tenterden.* Generally speaking, you say, the report is correct.) The form of the report is objectionable; if you want an opinion, the form of the report is objectionable.

Mr. *Wakley.* That's *your* opinion; but will you point out any inaccurate statement in the report,—[*a pause*]—can you do so? There are some expressions I did not hear made use of by the operator, which are reported in "The Lancet."

How near were you to the operator? Not so near as I am to you, Sir.

He might have used expressions then, the expressions which are there, without your hearing them? He might.

You object to the form of the report? (Lord *Tenterden.* You are reasoning with him now.)

Mr. *Wakley.* Can you point out a single fact, a single statement, in the report, which is incorrect, as far as your observation goes? If I were to go over the report, I might point out some statements that did not appear to me to be correct.

If you were to go over it—will you take it, Sir, if you please?—[*Handed "The Lancet" to witness*]—when did you read the report first? A few days ago.

Sir *James Scarlett.* I won't object to what is doing now, but this is the most summary way I ever saw taken. (Lord *Tenterden to witness.* There never was such a thing; you should come prepared to give your opinion, Sir.)

Mr. *Wakley.* Did you state before you came into court—— (Lord *Tenterden.* No, if you were cross-examining him, you might put your question to him in that way, but not to your own witness; you have no right to ask the question in this way.)

Mr. *Wakley.* Was it a large or a small stone, Sir? A small stone.

Did you see the post-mortem examination? I did not.
Did you see the parts after they were removed from the body? I did not.
Do you know of any circumstance which could render the operation difficult? None.

Cross-examined by Sir James Scarlett.

Are you a member of the College of Surgeons? Yes.
Were you brought up as a surgeon? Yes.
Were you any other occupation? Yes.
What other? [*Hesitation.*] I have been a clerk.
A clerk; and a merchant? Yes.
Was that before you began to practise as a surgeon? No.
During the time? No, it was between the time—I served part of my apprenticeship.
Did you ever deal in any particular articles, and what was the nature of the merchandise? Sir?
Eh? Yes.
What was it—potatoes? .[*Laughter.*] Yes.
Then you were a potatoe merchant;—[*continued laughter;*]—I don't mean any reflection on you, I assure you, Sir—you have given your evidence much better than *a pupil*, I think: how long ago was this? Ten or twelve years ago.
You say you have witnessed fifty or one hundred operations of lithotomy—have you performed any yourself? On the dead subject, I have.
I desire to ask this question, and have the goodness to attend to me, Sir; when an operation is in hand, is there any body that can possibly explain so well the difficulties that occur as the operator himself? None.
May it not often happen that what appears ambiguous or doubtful to a by-stander, the operator, if asked, might be able to explain satisfactorily;—[*a pause*]—do you understand my question, Sir; may it not often happen that what appears ambiguous or doubtful to a by-stander, the operator, if asked, might be able to explain? Certainly.
Is that not more particularly true where the operation is performed without any sight of the eye, but merely by the feeling of the finger and instruments within the body? By feeling, you mean, Sir.
No—as you say, circumstances that appear ambiguous to a by-stander might be explained by the operator if he is asked, is that not more particularly true where the operation is performed without any sight of the eye—merely by the feeling of the fingers and instruments within the body? Yes.
Can any body judge so well, how far the instrument has reached, and what it has touched, as the operator who has it in his hand? Certainly none.
Now, I desire then to ask—I desire to ask you then, as a surgeon, whether it is not rash to give an opinion of an operation of that sort without asking the operator to explain what appeared to you to be doubtful? Certainly.
Eh? Certainly, there is no one, in my opinion, can judge of the difficulties of the operation, except the operator himself.
Then I ask you as a surgeon, and of some experience—you are not a pupil—whether any surgeon of experience would venture to give an opinion, without, at least, knowing what the operator had to say about it? Certainly not.
Now, in this case, should you not think it most presumptuous and rash in any man, particularly in a young man, and a pupil, to give such an opinion without having spoken to the operator himself? Certainly.
Now, next to the operator himself, in the case of lithotomy, who is the person that can next best judge; is it not the assistant surgeon? The assistant surgeon who holds the staff.
When did you first read this publication of "The Lancet?" On the day of publication.
Now, you say, if it were stripped of the expressions and the phrases you object to, most of the facts stated you would find correct enough? Had it been confined to plain matter-of-fact statement, I believe it might not have been objectionable.
I ask your opinion as a medical man, and acquainted with medical studies and

subjects, in your honest judgment, is that a fair report, or is it intended to calumniate? It's a very unprofessional report.

Now, whether all those instruments were used, or any of them, or whether, if used, they were all necessary, you say the operator must be the best judge? Certainly.

Now, I beg to ask this question—has not every operator for the stone a number of instruments at his command to use them if it be necessary? Why, Sir, the mode of operating for the stone is not yet settled in any country—every surgeon uses his own particular instruments.

Yes, but still every man who operates must have a variety of instruments to use *pro re nata*—to use those which may be necessary, must they not? Certainly.

Now, I just wish to ask you this—did you see the flow of urine from the first incision into the bladder? A small flow of urine followed the first incision—it must have been urine—it must have been blood and urine together.

Lord *Tenterden*. There was some urine mixed with blood? It's impossible to say.

Sir *James Scarlett*. It's impossible where you sat to be sure of that? It's impossible to say whether it was urine mixed with blood, or blood.

Now, just attend to me—did you, at any time afterwards, see any flow of urine after that first? I am not sure.

You did not examine the stone yourself? I did not.

Now, you say, men who appear to have seen a great many operations, cannot form any opinion of the difficulty? Oh, *might* form an opinion.

Now, does it not sometimes occur that the stone is folded in the folds of the bladder? It does, and contracts on the approach of an instrument.

Are you aware, where you have reason to suppose that is the case, the letting the instruments remain a little while in the bladder is advantageous? Yes, because the spasmodic action of the bladder may cease.

You say you have not seen many operations in this country? I have seen many.

Oh, many; more at Paris? I have seen more at Paris.

Re-examined by Mr. Wakley.

You have stated that the operator himself must be the best judge of the difficulties in the case? Yes.

Do you think he could have much knowledge of those difficulties when he stated in the presence of the patient, bound on the table, he could not ascertain the cause of them? I think the operator in that particular case, owed an explanation to the class; as it was a tedious operation, he owed it to himself and to the class to make some explanation of the difficulty.

Had there been any unusual difficulty, do you think a skilful operator would have failed to discover it? [*A pause.*] (Lord *Tenterden*. What do you say?) Had there been any unusual difficulty, do you think a skilful operator would have failed to discover what that was? That's possible—he might.

Mr. Wakley. But the operator must be the best judge? Certainly.

Mr. Thomas Bolton sworn. Examined by Mr. Wakley.

Did you witness the operation in the month of March, at Guy's Hospital, reported in No. 239 of "The Lancet?" I did, Sir.

Is that report correct, Sir? Generally, it's correct.

The operation lasted nearly an hour? Yes.

Sir *James Scarlett*. Don't say that.

Mr. *Wakley*. How long did it last? It might have been an hour; it might have been a little more, or a little less, I cannot speak to a few minutes.

Were there many instruments employed? There were.

Did you ever see so many employed on any former occasion? Never.

Was the operator in a state of self-possession? He was not at first certainly, but he appeared to regain himself in some degree.

He regained his self-possession at last? He did in some degree.

How many times were the knives introduced? Twice.

Did he use the cutting and blunt gorgets? Yes.

Lord *Tenterden.* Both? Yes, my Lord.

Mr. *Wakley.* When was the cutting gorget introduced? Before the fluid flowed. After or before the knives? After the knives.

Have you seen many operations of lithotomy? I have not seen more than six or eight; it may be as many as eight, but I am not certain exactly.

How long did those last? Some of them lasted five minutes, others ten; I have seen them ten minutes, or more.

Any unusual circumstance attending those that last ten minutes? No; excepting the stone was not grasped by the forceps.

Were those operations performed by Mr Bransby Cooper? No, Sir.

Not any of them? No.

Was there much violence used in this operation? Yes, there certainly was considerable violence used.

Were the forceps thrust a great way back? They were thrust a considerable way back after the first introduction, though not till after the second incision had been made with the knife.

Did there appear to be any obstruction to their introduction on the first attempt? After the first incision?

After the first incision? Yes.

In any of the other operations did you see the cutting gorget used after the knives? No, Sir; I have seen the cutting gorget used in the operation of lithotomy; but never any other cutting instrument in that operation.

You have seen the cutting gorget used, and that only as a cutting instrument? Yes, Sir.

How was the cutting gorget held on this occasion; horizontally? I believe, as usual, horizontal—rather obliquely; in some degree obliquely, but nearly horizontal.

Did you remain until after the operation was over? O yes.

Did you see the stone? Yes, I did, Sir.

Was it a large or a small stone? It was small compared with what they often are.

Did the operator offer any explanation of the cause of the delay? No; he turned round to the class, and said he really could not explain.

The cause of the difficulty? Yes.

When did he say that? During the time the patient was upon the table, and before he had extracted the stone.

What did the operator say after he had extracted the stone? He made use of some expressions of the kind after that; I don't recollect the expressions exactly.

How soon after? Immediately; not half a minute, I should think.

Was the patient bound at that time, or unbound? I really cannot say whether he was or not.

How soon was the explanation given—immediately? (Lord *Tenterden.* He made none.)

Mr. *Wakley.* The attempt at explanation? (Lord *Tenterden.* He made no attempt; he said he could not explain it.)

Mr. *Wakley.* What were the words he used? The words I don't exactly know; he said he could not state why it was.

And how soon after this was it? Immediately after this.

Do you consider the operation was scientifically performed? No; I could not consider that, certainly.

Cross-examined by Mr. Pollock.

Were you a pupil at that time? Yes, I was.

How long had you been so? I had been a pupil from the 1st of October, 1827, till that time.

That's about six months. Where had you been before that? I had only been a short time out of my apprenticeship; I served it to a gentleman in the country.

Where? Banberry in Gloucestershire.

Did you ever see any body cut for the stone in the country? No.

How many of those operations have you seen in town? Six or eight.

Was that the first? I should think it must have been the sixth—the sixth, or fifth.

Then you have not seen any since, or but one? [*A pause.*] (Lord *Tenterden.* Have you seen any since?) I don't recollect at present whether I have or not, exactly.

Were you present at Mr. Grainger's? I was a pupil of Mr. Grainger's.

Well, were you present when any lecture or reading was given on this operation, or this sort of operation? No; I have not attended Mr. Grainger, or been at the hospital, since May.

Since last May? Last May.

Mr. Benjamin Harrison sworn. Examined by Mr. Wakley.

Are you treasurer of Guy's Hospital, Mr. Harrison? Yes, Sir.

How many years have you held that office, Sir? One-and-thirty years, I think, Sir.

Have you brought the papers with you which you were requested to bring in your subpœna? I have a minute-book here.

Have you brought the others? I had no opportunity of keeping them in my hand all day, but they are in the lobby.

In that minute-book, are the names of the governors inserted who voted for Mr. Bransby Cooper's election? Certainly.

Have you brought with you also the preparation taken from the body of Stephen Pollard? Yes.

Who voted for him? For Mr. Cooper?

Lord *Tenterden.* He was elected surgeon of the hospital? Yes.

Mr. *Wakley.* Was Mr. Bransby Cooper one of the apprentices to the surgeons of Guy's Hospital? Yes.

To whom was he apprenticed? He was apprenticed to his—to Sir Astley Cooper.

When did his indenture expire, Sir; in what year? Why, Sir, I don't recollect exactly, but I should think somewhere about a year and a-half before his election; about a year and a-half, nigh upon, before he was elected surgeon.

Did not his indenture expire in 1825, Sir? I really cannot recollect.

Lord *Tenterden.* If you go to very minute parts, you must have the books.

Mr. *Wakley.* For how long a time were the indentures drawn, Sir? Why, Sir, the term of apprenticeship, I believe, is six years; I am not quite sure whether they are six or seven years, but I believe the custom is now six years: I think so.

You are not certain that the indentures expired in the year 1825? No, I am not.

In what year was Mr. Bransby Cooper elected surgeon to the hospital? I really am not sure without looking.—[*Witness took out of his pocket a parcel of papers, into which he looked.*]—He was elected on the 13th of April—no, on the 4th of May, 1825.

When did Mr. Bransby Cooper become a member of the College of Surgeons? I have no knowledge of that.

You are not aware of the year? No, Sir.

When did Sir Astley Cooper vacate his office in Guy's Hospital? Sir Astley Cooper vacated on the 13th, that is, he was elected, he was appointed consulting surgeon on the 4th of May, 1825.

Had Sir Astley Cooper previously held the office of surgeon? Yes.

On what day was Mr. Bransby Cooper elected, Sir? On the 4th of May, 1825.

Then Sir Astley Cooper was elected consulting surgeon, and Mr. Bransby Cooper assistant surgeon, on the same day? Yes, Sir.

At least, surgeon? Mr. Bransby Cooper surgeon, and Mr. Callaway assistant surgeon.

On the same day?

Lord *Tenterden.* On the same day? All on the same day.

Mr. *Wakley.* Was there any public announcement that the office of surgeon would be given up by Sir Astley Cooper? The notice, Sir, was by a committee held on the 13th of April previous; the notice was given by the committee; the committee proposed to the general court that Sir Astley Cooper should be

appointed consulting surgeon, and that a surgeon, should be appointed in his room, and an assistant surgeon, but the minutes are here, and I could save time, perhaps, by reading them from the book itself.

The notice was given to the committee? (Lord *Tenterden.* No, by the committee to the court.)

Mr. *Wakley.* Did the court give any public intimation that Sir Astley Cooper was about to vacate? The court gave notice in this case, which is not at all necessary to be done, but the committee did meet, and did appoint a particular day for a general meeting to take place to fill up the vacated situation.

Did the general court insert in the public newspapers either that such office was vacated, or was to be vacated? Most assuredly not.

They neither did, nor was it ever the custom in that institution? They never advertise the vacancy of any of them.

Were any testimonials of Mr. Bransby Cooper's surgical abilities produced at his election? Mr. Bransby Cooper, as an apprentice at the hospital, had been constantly under the observation of the governors and others connected with it, legislating in the affairs of it.

That is not exactly an answer to my question, Sir, if you will be kind enough to attend to it. What I asked was, whether any testimonials of Mr. Bransby Cooper's surgical abilities were produced at his election? As we never have had occasion to apply for any other assistance than to those who have been in our own hospital, the surgeons have been raised from our own apprentices, and those apprentices have been constantly under our own eye. If they had been absent from the hospital for any length of time, it would then have been necessary to give a certificate of how they accounted for that time, and what they were doing when they were no longer under our observation.

Did you consider that testimonials to ability were unnecessary? I considered that we were in possession of every information we could have as to the abilities and competency of Mr. Bransby Cooper; that he was perfectly competent to that situation.

Are you a surgeon, Sir? No, Sir, I am not.

Are any of the governors surgeons? No, I believe not; no, certainly not.

Do you suppose, Sir, that persons who are not educated——

Sir *James Scarlett.* Don't ask him what he supposes.

Mr. *Wakley.* Do you believe, Sir, that persons who are not educated to the medical profession, are the best jndges of medical skill? I should not attempt to judge myself, or the governors individually; they could only judge from representation; they had the opportunity, under their immediate observation, every day, of hearing of Mr. Bransby Cooper, and his abilities and pretensions were always before them.

Who were his contemporaries at that time? Upon my word out of two hundred or three hundred pupils, it would be impossible for me now to tell; I suppose the question you want to know is, who were the candidates; there were several—Mr. Berry, Mr. Callaway, Mr. Smith, Mr. Tyrrell, Mr. Morgan, Mr. Cox, were all fellow-apprentices, I believe.

Lord *Tenterden.* But were they all candidates? No; he did not ask that question.

I thought he had asked the question who were candidates? No, who were contemporaries.

Lord *Tenterden.* Then they were fellow pupils and apprentices?

Mr. *Wakley.* Is there a by-law in your institution, Sir, which renders it impossible that you should elect the surgeon from any other persons than the apprentices? No, Sir.

There is not? None whatever; we should be quite at liberty to go elsewhere if we found we had not sufficient talent within our own hospital.

Has any other person been elected a surgeon to Guy's Hospital during the period you have held the office of treasurer? Yes, Sir.

Who was not an apprentice to the hospital? No, they have been so till the recent appointment, Sir Astley Cooper was the only instance—was the first during my time, and I can only say, that Sir Astley Cooper's pretensions were the same in all respects under our own eye, as those of Mr. Bransby Cooper.

Lord *Tenterden*. Sir Astley Cooper was almost the only instance during your time? No; Mr. Key and Mr. Morgan were elected during my time; but perhaps that will come in after.

Mr. Key and Mr. Morgan have been elected since this? No, previously.

Mr. *Wakley*. When was Mr. Key elected? (Lord *Tenterden*. I don't see the drift of this; I believe the shortest way will be to read it?) In September, 1821, it was deemed expedient to appoint an assistant surgeon, and a general Court held on the 19th September, 1821, decided upon the election of an assistant-surgeon, which was to take place on the 26th of the same month; on the 26th, Mr. Berry, Mr. Key, Mr. Tyrrell, and some others, presented petitions, and Mr. Key was unanimously elected.

Mr. *Wakley*. Is Mr. Key the nephew of Sir Astley Cooper? Yes, I believe he is; he married his niece, Sir.

Is Mr. Morgan one of the surgeons of the hospital? Yes.

Whose apprentice was he? The apprentice of Sir Astley Cooper.

Mr. Key was the apprentice of Sir Astley Cooper? He was, I believe.

Whose apprentice was Mr. Callaway? The apprentice of Sir Astley Cooper, too.

Is Mr. Callaway the senior of Mr. Bransby Cooper? Yes, Sir, he is.

He is? Yes.

Had you a consulting surgeon at Guy's before the 4th of May, 1825? No, Sir.

You had not? No, Sir.

Had you an assistant surgeon at that time? We had an assistant-surgeon, as I said before, who was elected on the 26th September 1821. When Mr. Key and Mr. Morgan were elected, being two young men, into the situation of surgeon, it was thought quite unnecessary to have any assistant surgeon, and therefore he was discontinued; but who was continued when we had Mr. Lucas at a very advanced period of life, Mr. Forster in very ill health, and Sir Astley Cooper in very extensive practice at the west end of the town.

But when you appointed Mr. Bransby Cooper in 1825, did you think it necessary then to appoint a consulting surgeon and an assistant surgeon, both at that time? Yes, Sir.

Were the other surgeons at that time in health? I have stated before, that the circumstance of Mr. Forster's advanced age, Mr. Lucas's ill health, and Sir Astley Cooper's very extensive practice at the west end of the town, caused it to become expedient to have an assistant surgeon appointed.

I am speaking of a period subsequent to that? Well, Sir, I am going on to state; the assistant was appointed till Mr. Forster and Mr. Lucas resigned the situation, and then we had got two efficient young men, it was deemed unnecessary to have the assistant any longer; but on the 12th of April, 1825, an anatomical theatre and appendages were built, and in consequence of this, and in consideration of the duties of the surgeon, it was necessary to have a considerable degree of increase of strength; it was therefore deemed expedient at that time to have more assistance, inasmuch as some part of the time of those engaged would be occupied in teaching, and which had not been before at that hospital.

Now, Sir, when Mr. Bransby Cooper was elected to the office of surgeon, did you elect him in preference to Mr. Callaway, solely in consequence of his superior surgical abilities? He was elected in consequence of his being peculiarly applicable to the character of person we then required in that situation.

I must have an answer to that question? Well, we were to elect persons who were, as I said before, skilful, and always with us in the hospital; we considered him perfectly qualified to become a surgeon, and likewise perfectly qualified to become a teacher in our school.

Mr. Harrison, on your oath, Sir, I ask you, whether you would have elected Mr. Bransby Cooper to the office of surgeon, in preference to Mr. Callaway, if Mr. Bransby Cooper had not been the nephew of Sir Astley Cooper? Most assuredly I should, as being at that moment best fitted for the vacancy which then occurred.

To what peculiar circumstance do you allude, Sir?

Lord *Tenterden*. He has not mentioned any peculiar circumstance.

Mr. *Wakley*. Yes, he has.

Was it on account of the establishment of the anatomical school? I say, that

under the circumstances of the case that then occurred, he was considered by me and the governors at large, the proper person to be elected; we were, in considering the proper person, of opinion that he was, and the legislative body thought him the proper person.

I must repeat my question, which is, if you would have elected him to the office of surgeon—surgeon only to the hospital, leaving the school out of the question, in preference to Mr. Callaway, if he had not been the nephew of Sir Astley Cooper? I don't know what I should have done in any supposed case, it's quite sufficient for me to meet the difficulties of the case that arise in the situation of things as they are. (Lord *Tenterden*. That's a very rational answer.)

Mr. *Wakley*. Mr. Harrison, do you believe that Mr. Bransby Cooper's surgical skill is superior to that of Mr. Callaway? Sir, I really cannot speak upon that; I think he was the person peculiarly calculated to fill the vacant situation. (Lord *Tenterden*. It's a most invidious thing to ask such a question. Mr. *Wakley*. My Lord, one complaint is—— Lord *Tenterden*. But suppose they were of equal skill?)

Mr. *Wakley*. Then I will ask that? As to the comparative skill of all these gentlemen, it's not for me to say; I can only say that at that time he was the person most likely to fill the office; that at that time he was the person to whom I had determined to give my assistance, and to whom the other Governors determined to give their assistance; I don't feel that because there are two candidates, and I give my assistance to one, I am to invalidate the talents of the other.

Is there any anatomical school mentioned in the will of Guy? No.

Or in the Act of Parliament? No.

When was the last Act of Parliament passed? In 1724; the institution was incorporated under the will of Guy, and by nothing else.

And the medical school is not mentioned either in it or in the Act of 1824? No.

Was Mr. Bransby Cooper elected chiefly to conduct the school, or as surgeon to the hospital? He was elected by the Governors to fill the office that then opened, but really, as to motives of the Governors, I do not feel myself called upon here to explain them.

Were the now medical schools of St. Thomas's and Guy's one before the year 1825? Were they considered as one before the year 1825? (Lord *Tenterden*. He said there was no medical school. *Witness*. No surgical school.)

Mr. *Wakley*. Were they the same? No; that would be a long explanation if I were to go into it—there was the medical school of Guy's and the surgical school of St. Thomas's—but it was the united school of both as to the pupils.

What led to the separation at that period? My Lord, I must really ask whether I am to go into this?

Lord *Tenterden*. They were both one as regarded the pupils? The surgeons' pupils entering at one had the advantage of attending the other.

Mr. *Wakley*. To the surgical practice? Yes, the surgical practice.

Do you believe it is the best way to obtain surgeons of ability by selecting them merely from your apprentices, and not advertising? I can only judge of that by judging of the result of what has taken place where there was no advertisements which, I presume, you are thinking of; and Sir Astley Cooper's experience has told us our plan is right, and we are not likely to deviate from it.

Was Guy's Hospital celebrated for skilful surgeons before the year 1823? Upon my word—— (Lord *Tenterden*. How can he tell? what a silly question. Mr. *Wakley*. Your Lordship would not think so if it were truly answered.) Guy's Hospital has always been celebrated; I can only say we have been peculiarly fortunate in having men of great integrity and skill.

Before Mr. Bransby Cooper was elected, did you ever see him operate? Never saw any body operate on any occasion.

From whom did you receive your knowledge of him? Acknowledged by the acclamation of the house—by the whole—by his having been, during his dressership and his apprenticeship, daily under the inspection of the Governors, but more immediately under my own inspection.

Do the Governors attend frequently in the wards of the hospital? Not in the wards, certainly; the business of the hospital is so appointed as not to require it:

I attend frequently myself in the wards; there are stewards who are appointed to go there;—I attend frequently myself, though it is not my business to go.

Cross-examined by Sir James Scarlett.

Without asking any impertinent questions, as they would be, about your establishing a surgical and medical school, as well as in St. Thomas's, did it appear necessary that in 1825 they should be established? I have just stated that at the moment they determined to build a school, they examined the surgical state in the hospital, and they thought it necessary to have a consulting, and an assistant surgeon.

Mr. Bransby Cooper had been there, you say, for many years? Yes.

Had he not been the demonstrator for his uncle? Yes; Mr. Bransby Cooper exactly held the office: I should tell you, Sir, that Sir Astley Cooper, when he was selected to be the surgeon of the hospital, he was demonstrator; Mr. Key was the demonstrator when he was selected; Mr. Morgan had been teaching, in the course of the summer lectures to the pupils, in conjunction with Mr. Key; and Mr. Bransby Cooper filled, at the time of his election, exactly the same situation Mr. Key and the others had done before him; and, certainly, when he came from the anatomical school, I don't pledge myself that would have been the plan adopted if the circumstances had been different; but it was the plan adopted, and the surgeons having been very recently engaged in the anatomical school, have given great satisfaction.

I only wish to know, Sir, whether he was a teacher,—anatomical demonstrator, under his uncle, for some time before his election? He was, and gave great satisfaction.

Was that the general impression? It was.

Therefore, as you wished to have a teacher as well as a surgeon, you considered it necessary to have a person qualified for both? Yes.

Was he not recommended by all the surgeons of the hospital? Most assuredly; he was recommended by the whole establishment.

Now, you have been asked about Sir Astley Cooper, have the goodness to attend to my question—it was one of the reasons, among others, that Sir Astley, having a very extensive practice in the west end of town, you did not wish him to be any longer surgeon to the hospital—now, did Sir Astley know that you intended to have elected his nephew in his situation? No, he did not; I considered that, after the very high and distinguished situation he held, it would have been a most ungracious thing to have made any alteration without submitting it to him: I then told him it was proposed to appoint him consulting surgeon, and that it would then be necessary to have a surgeon, and that it would be expedient to have an assistant surgeon also appointed to the hospital.

The change, then, did not originate by Sir Astley Cooper's request at all? Not at all.

Was it not rather against his inclination at first? I don't know that Sir Astley said that, he did state in a note I received from him, when I first submitted it to him—

Lord *Tenterden.* No; we ought to have the note if you go into that.

Sir *James Scarlett.* Do you happen to have a contemporaneous letter of his? Yes, I have.

Explaining the circumstances? Yes.

Explaining his circumstances, when you first communicated the information to him? I should state, without referring to the letter at all, when I mentioned it first to him he made a communication to me, and—— (Lord *Tenterden.* We cannot have any communication.)

Sir *James Scarlett.* No; the gentleman who wishes to prove his case may have it, if he likes: now, was it, directly, or indirectly, by any corrupt influence on the part of Sir Astley Cooper, that his nephew was appointed to the situation? Sir Astley Cooper had nothing to do with the appointment whatever; he never interfered with the regulation in any way whatever.

Did he either suggest the arrangement, or interfere in the appointment of his nephew, in any way? No.

Now, did you happen to know, Mr. Harrison, that, besides Mr. Bransby Cooper's

practice at the hospital, he had been at the Norwich Hospital, and been serving in the campaigns in Spain, attached to the artillery? I did, Sir.

Under the Duke of Wellington? Yes.

And that he afterwards went with his regiment to Canada? Yes: and he spent some intermediate time in improving himself at Edinburgh.

I am not aware of your having been acquainted with the fact, but I believe he was first a pupil at the Norwich Hospital for two years? I don't recollect the succession exactly.

Well, he did not come to Guy's Hospital before he went to Spain? He entered, then went to Spain, and, I understood, commenced his apprenticeship after he came from Spain.

Then, how long he had been there you don't know? No; I should think he had been entered some two or three years before his apprenticeship.

Did he go to Canada, then? Yes, as I understood.

When he returned from Spain, did he not go to Edinburgh? So I understood.

Was he not in some situation then? I understood he filled some distinguished situation among the pupils—filled some chair.

And then he came eventually, and served an apprenticeship to his uncle? Yes.

Now, I believe you know that, in order to become a member of the College of Surgeons, he must have served an apprenticeship; now, I hardly need ask you whether Sir Astley Cooper has not had the first, and an immense practice for many years? Yes.

Do you know whether his nephew resided with him, and had an opportunity of witnessing his practice for a great length of time? I always understood that.

Do you happen to know that the Norwich Hospital is particularly celebrated for operations of lithotomy? I have understood so.

When Mr. Bransby Cooper commenced his lectures in your hospital at Guy's, was not the school very numerously attended? The school has been very well attended.

Has he not maintained that reputation which induced you to choose him, throughout? Perfectly.

Perfectly so? Yes.

Re-examined by Mr. Wakley.

Mr. Harrison, are you certain that before a person can be admitted a member of the College of Surgeons he must have served an apprenticeship for six years? (Sir *James Scarlett*. He did not say so.)

Mr. *Wakley*. Or an apprenticeship at all? I am not versed in that; I know he is a member, and I know that before a man can be admitted as a surgeon to the hospital, he must be apprenticed, and entered at Surgeon's Hall; it has been so with those that have hitherto been elected.

Lord *Tenterden*. The question the gentleman asked you was, whether a person must have been six years an apprentice before he can be admitted a member of the College of Surgeons? Oh, no; I beg to correct that—I believe—I don't know the College of Surgeons' regulations, but they only require attendance on certain lectures, I believe.

Mr. *Wakley*. Did Mr. Bransby Cooper serve with the army in Spain, go with his regiment to Canada and was the president of this society at Edinburgh, before he had served his apprenticeship? Before he had served his apprenticeship.

The preparation, if you please? The curator is here with the preparation, in the lobby, at the private door.

Lord *Tenterden*. Will you call for some other witness until it is here? (Mr. *Wakley*. I scarcely know what witness to call until I see it, my Lord.)

Lord *Tenterden*. Now the preparation is here, do you call any body to speak about it? (Mr. *Wakley*. Mr. Alderman Partridge is looking at it.)

Mr. Alderman Partridge recalled, and examined by Mr. Wakley.

Have you examined that preparation? I have looked at it.

Can you discover the incisions at the neck of the bladder? I cannot; I can see a large opening made into the bladder.

Can you, in that preparation, discover any reason why the operation should have lasted half an hour? I am not prepared to answer that unless I had it out; it's put into a glass with turpid fluid, and I cannot see very minutely what it is.

Mr. *Wakley.* May the preparation be removed from the glass?

Lord *Tenterden.* I don't know that the governors will allow it: is it possible, after this length of time, you can form any opinion upon it?

Witness. Before I venture any opinion upon it, I should like to see it by myself.

Mr. *Wakley.* I have not seen this preparation before.

Lord *Tenterden.* I dare say not.

Witness. I think the best anatomist in the world would be put to a stand still upon looking at it as it is.

Mr. *Wakley.* If you had the preparation in your hand, would you have any difficulty in ascertaining whether there was an oblique or horizontal incision? Certainly not; I should if I had the parts in my hand, ascertain it.

Mr. *Wakley.* I have no other questions to put, and I have closed my case.

Sir *James Scarlett.* It is not likely that I should be able to finish my case to-day, now; and the question is, whether it will not be more convenient to stop here for to-night?

Lord *Tenterden.* Had you not better open your case now, and call your witnesses to-morrow morning?

Sir *James Scarlett.* I think I ought to have at least the opportunity of addressing a fresh jury.

Lord *Tenterden.* Well, if you think it more convenient, we will stop here.

Sir *James Scarlett.* There are a thousand circumstances which would make me wish rather to proceed now than to delay, but then——

Lord *Tenterden.* Well, it would be quite impossible to finish to-night from your statement, Sir James, only remember that to-morrow is Saturday.

Sir *James Scarlett.* Oh, my Lord, my case will not be so long as the defendant's has been; I have several witnesses to call; I won't after what has passed, your Lordship, call many, but some I must call.

Lord *Tenterden.* Then we had better adjourn. You will take care, gentlemen of the jury, to hold no conversation upon the subject of this cause except with one another. Half-past nine to-morrow morning.

A Juror. If your Lordship will permit me, I wish to mention a circumstance that the Court cannot be aware of. This morning it was almost impossible for us to get in. Some of us came a considerable distance; and when in the lobby leading to this court, on hearing our names distinctly called, we had no officer to clear the way, and it was impossible we could get through.

Lord *Tenterden.* I am very sorry for it; I should be very happy to render you all the assistance and accommodation in my power, but we have only a certain number of officers belonging to the court, calculated to keep the passages clear for the jury on ordinary occasions, but not adequate to keep back such an assemblage as there is on this occasion.

The same Juror. I beg your Lordship's pardon for mentioning it; but when we were called and could not get forward, and were liable to a penalty for not appearing, we considered it hard.

Lord *Tenterden.* Your penalty would have been remitted, Sir, under such circumstances. We will provide for you as much as possible to-morrow morning.

[His Lordship afterwards directed that a great number of constables should be in attendance as early as half after seven on the following morning, in order that they might obtain possession of the different passages leading to the court before the arrival of the crowd.]

SECOND DAY.

Saturday, December 13, 1828.

THE interest which had collected the crowd to Westminster yesterday, had in no respect abated this morning, as was experienced by those who endeavoured to make their way into the body of the court. The hall-doors were thronged at an early hour, by persons anxious to obtain admission. The officers, however, adopting a different course from that of yesterday, kept the crowd at the outer doors; and, until the jury, counsel, and witnesses were admitted, those who had assembled merely from curiosity, were not allowed to force their entrance. The gallery and back benches were filled by witnesses and medical practitioners interested in the cause.

After the jury took their places, one of them requested to be allowed to put a few questions to Mr. Lambert, before Sir J. Scarlett proceeded to make his speech.

Lord *Tenterden*. You must put your questions through me, Sir.

Mr. Lambert recalled.

Juror. He stated yesterday, that the cause which rendered the first introduction of the forceps into the bladder difficult was, because the first incision was not sufficiently large? I stated that I could account for it but in two ways, either that a very small incision had been made, or that the knife had not entered the bladder at all. [*Lord Tenterden then read his notes of the evidence of this witness, given on the previous day.*]

The Juror. I wanted to know whether the post-mortem examination was made before or after he furnished the defendant with the report? Before.

Juror. He stated that there was a small projection on the inside of the bladder, which appeared to him to be a little larger than the tip of his little finger; now I want to know, whether this unusual enlargement could not by possibility have occasioned the first difficulty in introducing the forceps? Certainly not, provided the cut had been made in the usual and proper manner.

Might this projection not have occasioned the trickling, rather than the gushing out of the bladder when the cut was made? I think not.

Sir *James Scarlett*. Now, my Lord, as Mr. Lambert is here, I wish to put two questions to him, which I neglected to put yesterday. (Lord *Tenterden*.) Then they must be put through the court (Sir *James Scarlett*.) I wish to know whether he communicated to the Morning Herald or the Times newspapers, any report of this operation, on or before the twenty-ninth of March? Certainly not; nor do I know how it got to them.

I wish to ask whether he is aware, that a notice did come out in those newspapers respecting this operation? I saw it in the Times, but I did not see it in the Herald.

Mr. *Wakley*. Now, I wish to know whether he has the slightest reason to believe that those notices were transmitted through me?

Lord *Tenterden*. Do you know that they were transmitted through the defendant? I do not.

Sir J. SCARLETT then addressed the Jury as follows:—May it please your Lordship,—Gentlemen of the Jury,—The time has at length arrived when the plaintiff is entitled, according to forms of proceedings in this place, to lay before you the grounds on which he seeks redress for one of the most injurious attacks upon his fame and his fortune that ever appeared in a court of justice, invented by falsehood and by malice. Hitherto he has been put on his defence, though he is the party who complains; and though he seeks redress at your hands, such is the fate of human affairs, that during an entire day he has been placed upon his defence as if he had been indicted for a criminal charge, and up to this hour you have no reason that I am aware of to know of what it is he complains, unless, perchance, you have read it in the evening papers of yesterday, furnished with a curious exactitude—furnished, no doubt, by the defendant or his attorney—furnished without any antidote or explanation; giving to the proceeding, of which the plaintiff complains, the widest possible circulation, circulating it by this time throughout every town in the kingdom, and which, in a few days, will be over the whole world, striking, therefore, still deeper into his bosom the injury he has already received. Gentlemen, look at the state of the proceedings of this day and yesterday, and I will venture to say, that they furnish, to every reasonable man, the grounds for grave and serious reflection. It is not my business, Gentlemen, to complain of the forms of law, or of the practice in courts of justice. I submit, as every subject does, to the rule by which we are all bound, but in a particular case I may be at liberty to suggest, how unfortunate it is for an individual who is attacked by a gross, a scandalous and malicious libel, that he should have all the zeal and all the interest of the public excited to hear his accusation, and that when that has subsided, he is to be put upon his charge. I mean to hear the accusations against him, for I have no doubt you all feel that you are now sitting in judgment, not upon what reparation shall be made to an injured man for one of the basest calumnies any man can complain of, but whether Mr. Cooper is not a party unworthy of his situation, who has contributed to shorten a man's life, and who wants that skill and knowledge of his profession, which no man has ever dared to doubt who had any skill, or knowledge himself. I have some reason to complain of the fate that has attended my client—that when he entered upon the threshold and sanctity of this court, he meets the sword of the assassin; that before he has had time to seek redress, the wound is plunged deeper and deeper into his side, he is tortured, he is dissected in the manner you heard yesterday, and now you come with minds, no doubt, prepared to learn what it is he complains of, and what it is you are called upon to give a verdict. Gentlemen, I am no enemy to the periodical press, far from it, though I have never flattered it, and will never court it; but this I will say, the example of this proceeding has given it a triumph and an interest which it never had before. Allow me, therefore, to enter now upon my case, and suspend, if possible, the doubts you entertain, for they can be but doubts, whether Mr. Cooper is the object which yesterday it was exhibited to you that he was. He is a gentleman who has an honour he has reason to be proud of, a connexion with Sir Astley Cooper, my highly honoured and excellent friend. I should think it one of my greatest privileges if I could claim that connexion with him which Mr. Bransby Cooper does. In early life, as soon as his profession was finally chosen, Mr. Bransby Cooper became a pupil at the Norwich Hospital, the most distinguished, with the exception of those in London, for this operation of lithotomy. He served with diligence in that hospital for nearly two years. He then came to London, he was admitted a pupil of Guy's Hospital, where he continued for a year

and a half, nearly two years, when, as I hope I may be allowed to say, and I I hope I may offend nobody by saying it, that his merits, as well as his manners, recommended him to that notice by which he was appointed assistant-surgeon to a regiment of artillery, and went abroad in 1813, and was present in every battle till that of Thoulouse—that grand effort which was the basis of peace, and led to it in the year 1814. His first exhibition of coolness was in operating on the field of battle under the roar of cannon, and exposed to personal danger. His experience, as a surgeon, was known in that extensive field, where a man acquires both confidence and talent, and he had the opportunity of showing that talent which justified his honourable relative in wishing him to pursue that line of life for which his talents seemed destined, and which, if he pursued with the industry and talent he had, he was sure to meet with that prosperity he was so likely to attain. He went to Canada, and served nearly a year in the last unhappy war in which we had the misfortune to engage with our friends in America. When that terminated he was sent to Edinburgh, and was admitted there as a student; and you hear, from the defendant's own witnesses, that he received all the attention there a man could receive as a pupil, by being placed as president in the chair of a society till he quitted the place. He had it open to him to choose what line he thought fit. He might have taken his degree, and established himself as a physician, but he had the example of his illustrious uncle in his view, one of the most distinguished as well as one of the most prosperous men that ever entered into his profession, and he thought proper to pursue it. Sir Astley Cooper was the surgeon of Guy's Hospital; he had been the pupil of Mr. Cline, a man educated in the same school; he became bound an apprentice to his uncle in 1817. During that period his exertions were unremitting. I have a right to say so, from the evidence of that excellent and honourable man, who gave his testimony yesterday, and who was intended to be insulted, who stated that his conduct was honourable to himself and satisfactory to all around him. Sir Astley Cooper made him his demonstrator of anatomy. Sir A. Cooper, who gave distinguished lectures there, found him a most valuable assistant, and by his engagements in this way, he was led to obtain an acquaintance with all the most abstruse parts of the profession, and got an opportunity which scarcely any man possesses, to become by and by, of the same fame, and to have the same success, as his honourable relative. He did more than that. Sir A. Cooper—whose practice has been probably more extensive, for a number of years, than any other surgeon in the world, called by all sorts of persons to perform the most difficult operations, and who never, as those who know him can say, allowed the call of the poor to be disregarded, who bestowed as much in humanity as for gain—Sir A. Cooper, having daily and nightly requisitions, was obliged to do that which every person in his extensive practice must do, namely, have a person to assist him when he was called upon to one place of emergency, that his patients might not want him in another. Sir A. Cooper found in that nephew one of the fittest persons to assist him, and one who was able, according to the statements of that most eminent man, to discharge the most important duties, when he himself, from the impossibility of being in two or three places at the same time, was forced to employ an assistant. Gentlemen, do not suppose such an employment can be the result of favour, the surgeon who employs an assistant for that purpose, for his own honour and interest, is obliged to employ a competent man. He cannot do otherwise. Consider for a moment what situation Sir A. Cooper would be placed in, if, on your sending for him to perform a difficult operation, and finding him otherwise engaged at the time, consider the situation in which he would have been placed, had he sent you for his substitute a person

whom you found to be incompetent, or thought so. Sir A. Cooper would have been ruined in practice as well as in honour and reputation. I therefore have a right to say, not by his education only, but by that best testimony which Sir Astley bore to his nephew's fitness and capacity, that that fitness and capacity are established, beyond all doubt, on the most solid and substantial proof. Gentlemen, his apprenticeship expired in 1823. He had had at that time considerable experience and great practice. He became a surgeon upon his own account, still continuing, however, to render assistance when his uncle required it. What happened at Guy's Hospital? That establishment, about which, for the present, I say nothing—highly useful, and of the greatest advantage to the poor—the establishment, conducted by governors upon whose honour and character no impeachment was ever made until this scandalous and infamous publication thought proper to do so, they thought it expedient for the advantage of their charity to establish a school of anatomy, as that which existed at St. Thomas's Hospital, the medical and surgical schools of the two having been before combined. They had a right to do so. Having done so, who is it that dares, unless he defies all decency and common sense, to complain, because they thought, in their own hospital, where they had raised so illustrious a set of surgeons and so distinguished, who is it that dares to complain that they did not advertise in the newspapers, and seek some information from THE LANCET as to where they were to get assistants? The Lamberts and the Wakleys would then have been called forth to have brought forward candidates for the surgeoncy of this hospital, and they are injured for want of an advertisement to have called them forth. It is not from the school of Cline, of Cooper, not of Mr. Green, no, not even of Mr. Callaway himself, though some compliment has been paid to him, but which he disdains, from the quarter from which it comes, that can give you a competent knowledge of a proper surgeon,—no,—it is newspapers,—newspapers in the shape of THE LANCET—a paragraph in THE LANCET—that is the source from which the Governors are to obtain their information. That is the wound that has sunk deep into the defendant's breast; his dignity has been injured, his own eminence, his practice, the great circulation of his work, the number of cases he has reported, all these have vanished before the unhappy presidents of Guy's Hospital, and they have been left to seek among those of their own school for competent surgeons. I hope you will think it is a pardonable offence, and that my Lord and you will agree that the Governors of Guy's Hospital do not deserve to be tried and executed, because they thought it sufficient only to look into the school of Cline and Cooper for a surgeon to supply the vacancy in the hospital. But he was the nephew of Sir A. Cooper. You will see by and by what the libeller says on that subject; you do not know it yet, unless you have read the newspapers. He has attempted to prove, what he had the audacity to allege, that it was merely through the influence of Sir A. Cooper, that Mr. Bransby Cooper was put into that situation, and without any regard whatever to his merits—has he proved it? He has proved the reverse. You will remember Mr. Harrison's evidence, upon which I say nothing at present, for my time is not yet come to comment upon it. I have now, Gentlemen, stated the history of Mr. Bransby Cooper, and the progress he has made, which has led him to be one of the surgeons at Guy's Hospital, which office he now holds, and which has made him subject to the prejudice of some; but he disdains all petty feeling, and now comes forward to endeavour to save himself from what the malice of this man, and the enmity of the other, has attempted to plunge him into.

Gentlemen, it is time you should now hear who the defendant is, for in all cases in which a person seeks redress, it is necessary that we should understand

who he is. I know nothing of Mr. Wakley—I should not have known, except from what took place yesterday, any thing of the extreme ignorance of that which he professed; but I am authorized to say now, that he is as ignorant of his own profession as he is of good taste, or of the principles of social order exhibited in his writings. I say this only from what I heard yesterday; and when he talked of operations being performed, who ever heard of any being performed by him? I never heard of one. He is known to the public, I believe, only and exclusively from publishing THE LANCET, which, he tells you, he projected and established, and that he did it for the purpose of publishing Lectures delivered at the hospitals; thus avowing that he chooses to commit plunder on the property of others for the purpose of assisting himself. What, are we to hear it then said, that if Mr. Cline or Sir A. Cooper, or any other eminent surgeon, should compile a course of lectures, and deliver them to the pupils of his own class at the hospital, who pay him for their attendance, and remunerate him for those labours, that a periodical paper shall rob him of all advantage, and without his leave or license, make them public to all the world, so as to give all the pupils in the kingdom, desirous of studying his art, all the advantages that this gentleman thought he had established for himself; that he shall injure him by robbing him, by gaining ten times more than he did himself, after having been at all the labour of compiling the lectures? Can it be said that he is to do that, and make it unnecessary for any pupil to attend, because if any one can be so base and so ungentlemanly, by paying a little, as to make these lectures public, he, as a contributor to THE LANCET, makes him receive his £5,000 or £6,000 a year, and makes the Editor of THE LANCET a popular writer? This is what the gentleman himself avowed; he has avowed it is a work founded on robbery and plunder, and that he receives contributions for it from pupils of the hospitals, whom he calls men of honour, men who are induced to betray their honour, and who, by making contributions of the lectures they have heard, furnish that to the public which ought never to have come out of the walls of the hospitals, but by the consent of the professors themselves. But, Gentlemen, he don't stop here—he goes a step further. I am glad I address myself to gentlemen of education, as I only wish that every person would judge of this matter rightly. I would ask whether, if any one of you, if any man had taken great pains to get prepared a course of lectures, which he intended to have published himself, would he have endured that a pupil—an unfledged pupil, who had been allowed to hear them, and take imperfect notes, should furnish them to a gentleman who meant to commit them to the press without the examination and corrections which a man who goes to the press takes care to adopt for the purpose of guarding himself against the criticisms that are to be made? Can any man endure that such use should be made of his works? Suppose you had a written communication, what would you think if the person whom you intrusted the key of your cabinet with, had made extracts from it and sent it to THE LANCET? Would you not think him one of the basest of his kind, and that you ought not to allow him to enter over the threshold of your door again? And yet these are the contributors to THE LANCET, and the means by which the Editor of it rolls in his carriage, and laughs at the persons whom he has thus robbed and plundered. I have, then, upon his own authority to say, that his work is a sort of literary raven, which lives by plunder, fearless of shame, and fearless of the injury which he inflicts on others. Now, Gentlemen, what is it he has done to Mr. Bransby Cooper? In order that I may explain what I mean by and by, and which I have to submit to you, I am bound to go through a process certainly new to me, and probably rather tedious in its nature; but don't believe that Mr. Lambert, whatever he may

think of his own powers, or the pupil of six months, or the demonstrator of Mr. Sleigh's school, Dean-street, in the Borough, who, it seems, are no longer pupils but critics—the easiest trade of the two. Do not believe that you have from them any information whatever upon which you can rely. The defendant has called but two witnesses whose evidence deserves the least consideration, one is Mr. Alderman Partridge, and the other is a Mr. Lee, a surgeon, and also a dealer in potatoes. [*Laughter.*] Now I should have thought, as I shall state when I come to observe upon Mr. Alderman Partridge's evidence, which I shall do, however respectable he may be, without his liberty. I should have thought something better of him, if I had not supposed he seemed to endeavour to induce me to think that he knew nothing of the defendant. I should have thought better of him if I had not observed that of him, and seen that the defendant had the benefit of his assistance, and by whom he was prevented on some occasions from showing his ignorance. Certainly, the new acquaintance has improved very rapidly, and no doubt will continue to do so, for I observe them now sitting together. No doubt it will improve, and, depend upon it, whatever praises will be due to Mr. Partridge from THE LANCET, he will have them to a surfeit. Allow me to state, however, that any praises would not be valued by any respectable part of the profession from such a quarter. The moment that a critical work of this sort, which mixes up a great deal of personal ribaldry with affected reports of cases of surgery and medicine, the moment it gets into popularity, and the writer finds, as find he will, that that sort of ribaldry which some people call wit, renders it more acceptable to the ignorant, he has undoubtedly in his hands the interests and fortunes of those who are the members of the profession. That's what he grasps at, Gentlemen, and that is what he has. Every man who contributes to that work is celebrated in it. Every man who does not contribute to it is abused by it;—so that if he does not contribute to it, no skill will enable him to go on—no, he will be cut down and dissected by THE LANCET. It is the Lamberts, the Lees, the Partridges, and the young pupils of six months, who are to be celebrated, and they will be lifted up over the pupils of the Coopers, the Traverses, the Brodies, and all the other men of whom especial care is taken not to praise them, if they commit the unpardonable offence never to be redeemed, of not sending a communication to THE LANCET. Gentlemen, there is a certain privilege which belongs to this high profession, a something that is better felt than explained; and the man who does not feel it will not be sensible of the argument I address to you, or capable of appreciating it. In the ordinary traffic of life, called commerce, there is a course of plain-dealing, of simple integrity, that marks the line between honesty and the want of it, and which every man can understand; but in the practice of a liberal profession, there is a certain feeling of honour, which becomes a gentleman, and which a gentleman only can feel, which renders it not sordid, but gives to it a character which belongs to such a profession—a certain dignity, a certain pride which makes the man feel that profit is a secondary object to him—that fame, that reputation, and the means of utility, are his true rewards, and that every thing else is only secondary. If once the press gets a power, either in the profession of the law, or the profession equally honourable, and perhaps equally useful, or more useful, that principle is debased, that principle is destroyed, if a man finds that it depends upon whether he makes concessions to the Editor of THE LANCET, if he finds it depends upon whether he makes useful contributions—that he must court the author to acquire that fame which before was acquired by honourable competition and fair means, it introduces into the profession a means of degradation that dispossesses liberty, and that finally destroys it. What would you say now

of the different situations of surgeons, if, at this moment, any of the honourable persons in that situation, who could hear me, should tell you that all the reputation they have acquired by practice, all the esteem of the public they have secured, may be knocked down in a moment, if they have the misfortune to offend either Mr. Wakley (the Editor of this work), or some contributor to THE LANCET? Is that a right feeling? Is that dread a fit sentiment for a man to feel in an honourable profession? What if in the law, in every assize town, persons were employed to publish the fame of their own particular efforts, and not to allow that fair competition in a court of justice to determine who is the advocate the public would employ, but to give it out beforehand by suppression and false representation, would not that destroy the honour of the bar, and would it not tend still more to degrade that honourable profession, if among themselves persons were found capable of making reports of their own exhibitions? Such a thing cannot happen in the profession to which I belong, but it has an example in the profession of which we are treating to-day; for you have Mr. Lambert, who is said to be a surgeon, getting his eight guineas a month, (and depend upon it, Mr. Lambert's fame will depend much more upon the fame he gets in that publication than he will get from any honourable member of his profession,) he it is that furnishes contributions from the hospital where he has the privilege of attending. Such a course it is that degrades a profession,—such a course it is that from my heart and soul I wish could not taint such a profession. Gentlemen, I return to the immediate operation Mr. B. Cooper has performed at Guy's Hospital. For his time of life, he is now at the age of thirty-four or thirty-five, he has performed a great many operations for the stone; he has performed many at Guy's Hospital with complete success; but the successful ones have not been reported. He has performed many in private. I don't mean to say with respect to others, who are of much greater experience, and particularly one, who has perhaps performed a greater number than three hundred of these operations; I don't mean to compare his operations with the operations of those; but I speak of Mr. Bransby Cooper, who, I say, from his experience, has performed many of the operations of the most difficult and complicated kind. This operation for the stone especially, you have been invited by the defendant to consider. Now I shall state to you particularly the nature of that operation, but don't understand me as giving you a lecture, or stating more of the anatomy of the parts than the course of this proceeding makes it necessary for me to be aware of. Gentlemen, there was a time when this unhappy operation was attended almost always with the loss of life. The improved state of surgery, however, of modern times, has much improved the consequences of this disaster, so that the number of those who die, in comparison with those who are saved, is such as to make the operation what may be called safe. I believe that the numbers who die now are only two in fifteen, that is, only one to seven and a half; formerly, they very rarely escaped. At one time the numbers were about equal; at one time they were as one to four or five: now it is one to seven and a half; but that includes the disorder attacking patients at all ages. It attacks infants—infants, and in that form it is most easily dealt with. In many persons, at that tender age, the stone may be extracted almost to a certainty without hazard. In proportion as the patients advance in age, in proportion as it is cumbered with other diseases, the danger of the operation increases, but I believe that Mr. Bransby Cooper has performed the operation on, perhaps, one of the oldest men that ever suffered it—a patient eighty-seven years of age, perhaps one of the oldest men that ever endured the operation. The operation is never performed on an adult till he himself feels that the pain he suffers, or the apprehension of the

loss of life is greater than the risk of the operation. Every man must judge of that by his own feelings. There is something in the apparatus more dreadful than in the operation itself, something that sets the mind against being the subject of it. What is the consequence of that? That it is not the father, it is not the mother, it is not the surgeon or physician, but that condition into which a man is reduced by extreme pain, or the infinite danger of the loss of life, or the relief the operation is expected to give him, that will induce him to submit to it. You may suppose, therefore, that no surgeon was ever called upon to operate, unless the extreme commands of necessity, where the patient says, "I cannot live, I must die under it,—the agony is so great that I call upon you for instant relief; all judgment is at an end, you must perform the operation, or I must die." What then is to be done but to perform the operation? Now, Gentlemen, you will understand that the particular practice of different surgeons, in some slight degree, varies,—they all aim at the same end,—they are all for the relief of human sufferings. It is not our province to descant on the different schools. You have heard that the French hardly use any of the instruments we do. We use the instruments we think best, and, no doubt, they use the instruments they think best. The patient is bound,—the first operation, however, is to ascertain the existence of the stone. That is done by introducing through the urethra a sound,—a small rod of steel carefully introduced through that tender passage, and which finds its way into the bladder. Then, by a little turning of it about, if it encounters a hard substance,—if the operator feels it, and then, striking it with the instrument, he hears it, he then ascertains the existence of the stone. That being done, then comes the preparation for the purposes of operation, (and when I state to you the practice, you will understand me as stating it subject to any errors that may be corrected by and by,) which has not been explained to you in this case yet; and I understand the operation is very often done in the simplest manner possible, (the patient being bound,) by making an incision in the perineum between the scrotum and anus. Through that incision the finger is inserted into the bladder, and it very often happens, that when it is, the stone is thrown out without any other instrument being introduced, the stone being thrown out in a moment. In children, the parts you are to operate upon do not lie far from the surface, and are easily reached by the fingers. In proportion as the person becomes adult, those parts swell out, and therefore it is necessary in an adult, particularly in a stout man, to have recourse to other instruments. No man should ever attempt to operate without having a number of instruments at his command; he would be the most presumptuous man who did so, for the eye of the operator does not enable him to ascertain or state in what situation the stone is placed—it is all touch and feel, consequently a variety of instruments may be necessary; and every man who attends as a surgeon knows, that he is bound to have all the instruments that in the school of surgery, in which he was taught, is ever employed, to ensure the immediate necessity that may arise. The first operation is, then, to introduce again into the urethra the sound or staff. Mr. Key, a most eminent surgeon of Guy's Hospital, has himself been the inventor of the straight staff. He considers it highly useful; some use it; some do not—that is mere matter of opinion, upon which I call on you to give no opinion. What he calls his staff, is a straight sound, not curved, with a point. The urethra is a long canal, which passes through what is called the prostate gland before it enters the bladder; in the prostate gland it has a communication with other functions of animal life, which I need not allude to, but it is conveyed forward, and opens into the bladder. In pressing the staff, you penetrate the opening into the prostate gland, and the instrument is inserted into the bladder. The staff

has a groove in it, which is presented in front, and between the legs of the patient; and the use of that groove is, that when the operator introduces his knife, he may insert his knife into the staff; when the point of the knife is in the staff, he then knows he is in the true direction in the urethra, that he then can cut the prostate gland, and by bringing the staff forward, and altering its position a little, why he cuts the bladder. Now mark: The quantity of urine that may flow from the bladder, is always uncertain; it may happen that the urine is exhausted—it may happen that the urine may have been passed a short time before. If the instrument which the operator is to use first is a gorget, which is a hollow instrument, a gush of urine takes place; but if he uses the knife, and makes a cut into the bladder, the moment he makes the cut, the parts contract, and what oozes out is not accompanied by a gush, but comes out with more gentleness. The next operation is for the operator to introduce his finger. If he can get his finger into the bladder, and then can touch the stone, if, by good luck, the stone should be in the natural place where it generally falls towards the bottom of the bladder, his work is accomplished immediately, for he has then only to introduce the forceps above, put them down upon it, and catches it at once. If, in the same manner, he can feel it with the sound, he can also introduce the forceps, for then he has much to guide him in laying hold of the stone. But it happens, and happens in many cases where a man has arrived at the adult stage, that the perineum is too deep to admit the finger to pass through it and the prostate gland, and to reach the bladder. In those cases the operation is somewhat more uncertain, because as you are here in the dark, you cannot be absolutely certain. As you cannot get your finger into the bladder, whether the cut is wide enough and large enough—there is some little doubt about that—however, it is sufficient if the operator can get his finger on the prostate gland. The prostate gland is a gristly substance, somewhat harder than the rest, and when the finger is there, it operates as a fulcrum, and is a guide to the other instruments. The operator then takes the forceps, introduces them most carefully, as you will find Mr. Bransby Cooper did, in order to ascertain whether any resistance is made by the bladder to the introduction of the forceps. If no resistance is made, they then enter the bladder. The forceps being introduced, and which are by no means so clumsy as those exhibited yesterday, the wound may distend a little on their being introduced, as the bladder is capable of distension without the least injury to the patient. Well, then, if the operator enters the bladder, he tries to find the stone, and if he cannot find it, his conclusion is, that the stone, as it often is, is infolded in some part of the bladder, and contracted and grasped round, probably, with increasing force by the introduction of the instrument. He is obliged to pause, therefore, in order to see whether, in the course of a little time, the contractions of the bladder will relax, and to try again whether he can seize it; if he cannot get it, he must then conclude the stone is in some situation in which he cannot reach it. What is he to do? He is not able to ascertain the length of the wound, or the size of it with his finger, for he cannot reach the bladder. What is he to do then? He is then to have a larger wound; for if the prostate gland acts as fulcrum, it will not allow the forceps to range about in the bladder as much as may be necessary. That 's the cause. Now he works in the dark; he is obliged, from his own feeling and his own judgment at the moment, he is obliged to proceed: and now comes an instrument, which one of the learned gentleman's witnesses—one of the witnesses of the defendant, has never seen, and which Mr. Wakley humourously calls "my uncle's knife,"—the gentleman from the school formed on the first of October, never heard of it. Gentlemen, the first knife is a scalpel—an instrument with a very

sharp edge, and the operator may be in doubt as to the depth of the wound made by it, and which, indeed, he is never certain of until he has introduced his finger. Now Sir Astley Cooper's knife,—I don't profess to state all the advantages it has, but it is composed of a small rod with a point like a pin's head, or having a sort of small button on the end of it, and therefore it cannot penetrate without some resistance. Then the knife being inserted along the finger of the operator by means of the blunt point, it is sure to let the operator feel if he do not cut the exact wound he has made in the bladder. If it had a sharp point it would penetrate as it goes along, but as it has a blunt point and sharp edge, and the operator not being able to tell what the condition of the wound is, he prudently takes that knife, so that if he finds the place he first touches is not the wound, by a little slight motion he can get it into the wound. Now that is absolutely necessary for this reason—if the operator finds he is in the bladder, and can get in his finger, he can take another knife, and enlarge the opening, if it be necessary; but when the bladder is once cut, and the urine out, the bladder collapses you know, and he therefore can never be sure of hitting the wound, so that it must be a matter of doubt whether he hits the right wound or not. By this knife, with the feeler before it, the operator ascertains whether it enters the wound in the bladder or not; if he finds it can enter it, he presses it on, and then according to his own judgment; for it is only matter of opinion at last, he pushes on in the direction the original wound was made. It is not possible that he should always do it in exactly the same direction; he may make a little slight deviation—make a sliver, as it were, of the parts, but you will find that the bladder is lined with a mucous membrane, which is not liable to hasty inflammation, and no surgeon who ever did such a thing found that that injured the bladder. Well, having done this, he now introduces his finger again, to see if he has made a wound sufficiently large for the admission of the forceps. Well, what happens to many operators? What has happened to many of the most eminent men? why they did not find the stone. It happened to one of the most celebrated men that, after operating for an hour and a half, he could not extract the stone. Well, the sound is introduced, and if the operator don't feel the stone with it, as a guide it becomes useless, and if it is withdrawn, it is absurd to introduce it through the urethra, for if you do that, you may push it outside—you may push it through to the external parts, and therefore every skilful surgeon may safely introduce it through the opening he has made. You may introduce sounds of a different form. It is possible that the stone may be in some situation that you cannot get at with the sounds. You may be obliged to introduce what is called the scoop, an instrument not so large as the forceps, for the purpose of seeing whether by touching or tracing it to any place, if it is attached closely to the sides of the bladder, you can, by a little motion, make it fall into that instrument. If he should still fail, what must you do then? Why there are cases where no human being could extract the stone, and where the cause of difficulty has only been discovered upon a post-mortem examination. It is possible that a sound may be introduced, and the stone may be found, but which may be in a situation to which the operator cannot have recourse except by some other means; if that be so, he must have recourse to them, and it may be absolutely necessary to use other means to reach the stone in the particular situation in which it is placed.

Now, Gentlemen, I have stated the operation generally, and I proceed to state Mr. Bransby Cooper's operation.—The unfortunate man who was the subject of this operation was a poor man in some parish near Lewes. There is an exceedingly skilful man at Lewes, and many at Brighton. You may conclude that the parish overseers would not have sent that man to London if they could have

got a clever man in the country to have performed the operation. He was sent to Guy's Hospital. Mr. Bransby Cooper saw him. Though he was a stout man, though he had a hectic appearance, Mr. Bransby Cooper ascertained that his kidneys were probably in a disordered state, and he thought it proper to wait to endeavour to remove the complaint, which, accompanied with the other, made the painful situation of the man more aggravated. The poor man was in that state which I have represented. He said, I must suffer the operation, or I must die if you do not operate. The operation was performed. When the staff was introduced—the staff was straighter than the ordinary one, and I will give you a reason presently why it did not touch the stone. Mr. Cooper made the incision; there was a flow of urine which made it manifest to the bystanders that the bladder was penetrated—a flow, not a gush, for, under such circumstances, a gush could not take place. He introduced his finger; his finger felt the prostate gland, but he could not reach the bladder, the perineum was too deep, he spoke of that at the time. It was not a lecture, but a statement made by the operator during the operation, and at the time. Mr. Bransby Cooper feeling that his finger was on the prostate gland, and knowing that he had made the wound in a proper course, the next thing was to introduce the forceps, and by directing them to the proper place where the stone usually is, he would have succeeded in taking it, if it had been there. The forceps did go into the bladder; no man could judge of that but himself, or the assistant. He could feel, by holding the forceps in the bladder a little, and letting its contraction subside, the opening of the forceps, which was a clear proof to him that they were within the bladder—a clear proof to him that they were in the bladder, for that could not have been, if they had been in any solid substance. But he could not find the stone, he had no idea where the stone was. The first thing that occurred to him was, as the staff had not touched the stone, and as the forceps had not touched the stone, it might possibly be a case in which the previous indications had been fallacious, for previous cases of that kind had happened, and he felt, naturally felt, anxious at the moment. Sir Astley Cooper himself would have felt anxious if he had operated for the stone, and no stone was to be found in the bladder. He, feeling that the forceps had not a sufficient range to go round the bladder as they should have, and as they could not do without violence, he found it necessary to make another incision; he made the incision with the knife of Sir Astley Cooper, and for the very reason I have stated, that is, as he could not insert his finger into the bladder, he wished to get a knife that would go in without injury to any part. He made the wound—what was he to do? He tried the forceps again—he tried them again—this was the straight forceps, and still there was no success. It was very extraordinary. He then thought he would ascertain, by the sound introduced through the perineal opening, whether there was a stone or not. Upon withdrawing the sound, he found that the curved point of the sound,—upon withdrawing it, not upon his introducing it, or carrying it round the bladder—the curved point of the sound touched the stone; he then became satisfied himself that the stone was seated above the pubes in the upper part of the bladder—a position not common—in a sort of shelf there, but which does occasionally happen to be the case, and you find that Mr. Alderman Partridge, the only man deserving of notice the defendant has called, he says he has found it to be so, but which Mr. Wakley does not understand; he cross-examines his own witness upon that point—he is quite surprised. Mr. Bransby Cooper found the stone to be there; he says, I find it above the pubes, give me the bent forceps. The bent forceps is meant to reach this case; if the stone be folded in the upper part of the bladder, the bent forceps may touch it when

the others will not. Now observe; no surgeon can tell what is the given curve of a man's bladder without seeing it. No surgeon can adapt an instrument to the precise form of any viscera within the body. Mr. Bransby Cooper was certain the stone was there; he had felt it with the sound; the bent forceps were tried, but they would not touch it, and why? Because in passing up the forceps, suppose the stone rested here, the bent forceps in going up would only touch the bladder in which it was infolded, and upon withdrawing them, the point of the forceps would not be able to lay hold of it. He found he could not do it; he was satisfied the stone was secured within the folds of the bladder; he was bound to extract it, and he found that the bent forceps would not reach it, what then was he to do? He found that the only mode was to make the wound in the prostate gland sufficiently large to enable the straight forceps, without lacerating or tearing the parts, to go up to the bladder, and then, by pressing the abdomen above, make them reach the stone. Now, as to the gorget, it is not true that he used the blunt gorget—that's a fiction of Lambert's. The cutting gorget is a prolonged scoop, and sharp so as to cut as it goes in. It is considered by some surgeons, I won't say by all, but by Mr. Bransby Cooper it is considered, that that instrument will always make the wound large enough, and you heard from some of the witnesses, that it is sometimes used. But the gorget has two advantages; it cannot make the wound beyond a certain size; it will make the wound large enough, if it is not already large enough: if it be large enough, if the wound be large enough, it cannot increase the size of it, because it has no lateral mode of cutting; by pushing it forward, the gorget is turned with the concave surface on the finger, and then there is space enough to turn it round upon the finger so as to make the finger rest upon it. When you have done this, you are sure of two things; first, that if the wound is not large enough, it will enlarge it: if it is large enough, it will not increase it. Well then, having made the wound large enough, and having again introduced the forceps, I may venture to press down the forceps so as to throw the point of them up to the stone; and, accordingly, Mr. Bransby Cooper introduced the straight forceps; and whilst the abdomen was pressed down, which is above the pubes, whilst that was pressed down so as to meet the point of the forceps, by turning up the point of the forceps, he had the good fortune to take it—the stone was got out—the operation lasted about fifty minutes. It was an unfortunate operation. The patient was unbound immediately by the dressers. Some of them were there ready instantly to do it. They were not like that hostler-like surgeon from Beaminster, who could not bear to witness the operation; they unbound him, and he was removed to bed. Mr. Bransby Cooper did say, he could not understand the difficulty; but when he did understand it, he took the most efficient means of overcoming it. The form of the stone accounted for some of the difficulty he had met with. The stone was undoubtedly not a large stone; if it had been larger, it might have been easier caught. It was a flat stone, and lay upon the shelf of the pubes, as if a shilling were to lie in this position on its edge; so that you see there was no protruding part to catch it by: unless the forceps could have been pressed upon it, they could not get hold of it, for the point of the bent forceps passed under it. If the stone had been round, and projected over the shelf, the bent forceps would have got it; it was not, and they did not. Now what happened afterwards? Whenever an operation is performed at the hospital, of this nature, it is due to science as well as to the feelings of the persons who are interested in it, that the parts should be opened and examined. The man died in a day or two afterwards: on opening the parts and examining them, and I crave your particular attention to this, for you will not understand the attack made on

Mr. Cooper without attending to it. But I should mention to you, however, that in the course of the operation, a gentleman, who is admitted to be, by the defendant, a man of skill, the assistant-surgeon, and admitted by Mr. Lee, I think, the potatoe-merchant, to be the individual that must understand next best to the operator the course of proceeding, and can best explain it—Mr. Callaway, he himself thrust his finger in to see if he could reach the bladder, and he could not. Now I shall tell you it was an utter calumny, an utter falsehood to say that violence was applied. Mr. Callaway will tell you, that to apply the term force to it, is a gross and calumnious aspersion; and he had no doubt, from the very beginning, that the forceps had opened in the bladder, and that the operator was proceeding with the utmost skill. A young man, a demonstrator, went to this place, and he actually applied his finger in the perineum in the dead body, to ascertain whether it was a deep perineum or not—God knows, nobody expected there would be an edition of all this in THE LANCET—and he could not reach it. Then Dr. Hodgkin, who examined it, took the parts, and if he has given any opinion, it was, that the perineum was not larger than any man's of his size—a stout, athletic man. The wounds in the bladder were found precisely in accordance with the shape of the instruments, and what the operator had intended to effect, with the exception of a very small slit in the prostate gland, made by Sir Astley Cooper's knife, because it had not exactly hit the very line of the first wound, but which was not of the slightest importance, which was natural, and which every surgeon would have expected to take place. Gentlemen, there is between the bladder and rectum a cellular membrane, which, in cases of diseased kidney, or inflammation of the parts after death, becomes easily lacerable, so that you may easily insert the finger between them; but you will have it from those who saw it, that there had been no separation, that the union was perfectly sound, and it is impossible for any man who entertains the slightest notion of surgery, and who saw it, to entertain the slightest doubt as to that fact. The man's kidneys were diseased; it was clear that that had combined to put an end to his life; the pain and the agony arising from that might have shortened his life without the operation. Mr. Lambert was in the room; Dr. Hodgkin had made an observation—Mind, those observations were made, not expecting any thing for a moment—Dr. Hodgkin had observed, that those parts were easily lacerable: he turned his back, and then Mr. Lambert says, O, Sir, I find that there is an opening between the bladder and the rectum! "Then, friend (said Dr. Hodgkin, for he is a Quaker), thou hast made it thyself,"—and he had made it. The infamous man, he had made it himself, as I shall prove to you. Mr. Key will prove to you, Gentlemen, and Dr. Hodgkin will prove to you, that there was no opening, that there was no opening whatever there before. But mark his intention; his intention was to insinuate that the forceps had not entered the bladder, but that they had been forced up between it and the rectum. Now I will prove to you the stupid, utter ignorance, and the degree of contempt no man can express, which you will say, when you hear the evidence with which this man must be regarded. If that wound had been made with the forceps during the life of the patient, and within eight-and-forty hours of his death, it must have been traceable with the eye, by any man of common sense, by the marks of extravasated blood which would have been exhibited. They all examined it, and found none. Is this a calumny, then, of Lambert's, or is it ignorance? It is both. I am not disposed to rescue him or his Editor from gross ignorance for the purpose of fastening on him a gross calumny. This brings us, gentlemen, to the close of what happened at Guy's Hospital, and then comes THE LANCET. Mr. Lambert, the contributor to THE LANCET at eight

guineas a month, the surgeon who understands his business much better than Mr. Bransby Cooper, and who, upon his own oath, and upon his own only, is a better surgeon than Mr. Bransby Cooper, he makes his communication, and that first appears in this form—the form of a notice. Mr. Wakley, I will assure you, is a wit, and his wit is very refined. Mr. Lambert likewise partakes a little of that entertaining accomplishment. Now, gentlemen, look, if you please, at the notice of the operation. You know "my uncle's knife:" when Mr. Lambert, who had come to swear to the truth of this report, when pressed upon examination, since finds that he had reason to doubt that that expression was used by Mr. Bransby Cooper; but, however, such is the notice of it—"A remarkable case of Mr. Bransby Cooper—operation of lithotomy with my uncle's knife, and half a score other instruments"—that's the reference made to it. Then comes out this passage in No. 238: "On Tuesday last, Mr. Bransby Cooper operated for stone on a stout countryman 53 years of age; the instruments employed in this operation, *which lasted nearly one hour*, were Mr. Key's knife (so called), and straight staff, 'my uncle's knife,' a cutting gorget, a blunt gorget, &c., &c., &c. The patient, as indeed might be expected, died on Wednesday evening. We shall give further particulars of this *remarkable* operation." That's the first notice of it, and now comes "the further particulars." Now, gentlemen, I beg your attention to this, for you have not heard it yet. What do you think now of the feelings, what do you think of the taste, what do you think of the humanity of a man who could have witnessed this operation, even if it were such as he has represented it, and yet could have turned it into the form I shall now read to you, and printed it, accompanied it with ludicrous remarks, and in a dramatic appearance, for the purpose of amusing the public ear? I know not which of the two I would choose, if I were forced to retire from the necessity of owning myself the inventor of a gross falsehood to calumniate another, or to acknowledge that I made use of the truth in the form of a doleful tragedy, which would show me unworthy of the name of man. It is introduced "Guy's Hospital. The operation of lithotomy by Mr. Bransby Cooper which lasted nearly one hour." Then there's a note:—"The following passage occurs in John Bell's great work on surgery: 'Long and murderous operations, where the surgeon labours for an hour in extracting the stone, to the inevitable destruction of the patient.'" Now, I believe that Mr. Bell, who was a scientific and honourable man, would be as much astonished to hear this passage, if it were possible for him to hear, from his work made use of in this way, as I remember, in a country church, the congregation expressed on hearing the clergyman preach a sermon on top-knots; on which occasion, he gave them chapter and verse in the New Testament, for the expression—"top-knots come down." Mr. Bell was a learned writer, skilled in the Latin language; and at this part he was enforcing the necessity of making a deep incision quite into the neck of the bladder, and not to expose the patient to the danger of laceration in bringing out a large stone, for, as he says, if you don't make the incision large enough, the bringing out of a large stone cannot be done immediately, but must be done gradually, and not only is a work of great difficulty, but occupies a length of time, and is calculated to lacerate the parts, and thereby cause the operation to be accompanied with more danger—the danger of laceration, which is more dangerous than that of cutting; and therefore says he, in the words of Celsus,—"*Multo tamen patentiorem fistulam habiturus est rupta cervice quam incisa;*" and thus, says he, giving the whole of the sentence, and showing the nature of the operation to which he alludes, appears the cause of those long and murderous operations, where the labour of the operator and the length of time occupied in the ex-

traction of the stone is more likely to produce death, even if the patient survives it, than by having the parts sufficiently cut by the knife or gorget, or any thing else. Now he goes on: "We should be guilty of injustice towards the singularly-gifted operator, as well as towards our numerous readers, if we were to omit a full, true, and particular account of this case. It will doubtless be useful to the country 'draff' to learn how things are managed by one of the privileged order." You see this gentleman affects to write for the benefit of country surgeons, and to take them under his patronage—under his care—those eminent surgeons of Colchester, and of many other places; and he ventures to assume, that the London surgeons describe them as "*draff;*" a phrase he has himself fastened on them; for no respectable surgeon in town ever applied that term to them, many of them as eminent as the most eminent surgeons in town, and who, in many towns in the country, excel to as great a degree as any surgeons in London itself. "A hospital surgeon, nephew and surgeon, and surgeon because he is nephew"—so there you see he kills two birds with one stone, he has a hit at the uncle and the nephew too. How happy would he be if he were but able to destroy that family who has done so much for humanity. What felicity he would enjoy by destroying the Cooper family; what great good, what great advantage would be gained to the public and the community by such an achievement! "The performance of this tragedy was nearly as follows:—Act 1. The Patient."—Then there is a note to this passage—"The poor fellow, who has left a widow and six children, said that he came to town to be operated upon by the '*nevey*' of the great Sir Arstley." There is such a degree of wit and fancy here, that it astonishes me that the gentleman who has the education of a surgeon only, should have so much of what may be called real wit and fancy. "The patient, a labouring man, from the county of Sussex, thick-set, ruddy, and healthy in appearance, and fifty-three years of age, was placed on the operating-table at a few minutes past one o'clock, on Tuesday the 13th. The only one of the surgical staff present, besides the operator, was Mr. Callaway. The ceremony of binding the patient we need not detail; the straight staff was introduced, and was held by Mr. Callaway. The first incision through the integuments, appeared to be freely and fairly made; and after a *little* dissection"—the *little* is put in italics as much as to imply, he did not do that cut right—"the point of the knife was fixed (apparently) in the groove of the staff"—*apparently* is put in a parenthesis, to show you that the writer meant it to be understood that though apparently, yet that it was *not really* so. I think no man can doubt that. "Which was now taken hold of, and the knife carried onwards—*somewhere*"—*somewhere* is put in italics, and nobody can doubt what is meant by it. Mr. Partridge was obliged to admit, on his oath, though he did say at first that the report was accurate, yet he thought this was to give it a false import, to get the reader to believe that *somewhere* meant, not into the bladder, but somewhere else. "A small quantity of fluid followed the withdrawal of the knife;" and this report leaves it in doubt whether that was urine or not. "The forceps were now handed over, and for some time attempted to be introduced, but without effect. 'I must enlarge the opening,' said the operator; 'give me my uncle's knife.' This instrument was given, and a cut was made with it, without the staff being re-introduced." It would have been absurd to have introduced the staff again, he had his finger in, and was conducting the knife with his finger. "The forceps were again used, but as unsuccessfully as before; they were pushed onwards to a considerable distance, and with no small degree of force;" that 's false. "'It 's a very deep perineum,' exclaimed the operator: 'I can't reach the bladder

with my finger.'" That 's very likely; it may be true he did say so: the fact was so. "Act 2. The staff re-introduced, and a cutting gorget passed along it. Various forceps employed. A blunt gorget;" that 's false; "a scoop, sounds, and staves introduced at the opening in the perineum. 'I really can't conceive the difficulty. Hush! hush! Don't you hear the stone? Dodd,' turning to the demonstrator, 'have you a long finger? Give me another instrument. Now I have it. Good God! I can hear the stone when I pass the sound from the opening; but the forceps won't touch it. O dear! O dear!'" That is to characterize the manners of the man, to make it dramatic. "Such were the hurried exclamations of the operator. Every now and then there was a cry of 'Hush!' which was succeeded by the stillness of death, broken only by the horrible *squash, squash,* of the forceps in the perineum. 'Oh! let it go! pray let it keep in!' was the constant cry of the poor man. This act lasted upwards of half an hour; the former upwards of twenty minutes. The stone was eventually laid hold of, and never shall we forget the triumphant manner in which the assistant surgeon raised his arm, and flourished the forceps over his head with the stone in their grasp." Now, that 's Lambert's composition, who swore to you yesterday that Mr. Callaway had the stone in his hand, and that he did not raise the forceps over his head at all. "The operator turned to the students, and said, 'I really can't conceive the cause of the difficulty;' the patient being on the table, bound, while the operator was *explaining.*" The word *explaining* put in italics. So there was an explanation given, according to him; but that while the operator was waiting to explain, he had the inhumanity to keep the patient bound on the table! What does that mean? It 's a *tragedy,* indeed. I need not tell you that the instant the operation was performed the man was unbound. "The man was put to bed much exhausted, but rallied a few hours afterwards, and leeches were applied in consequence of the tenderness of the abdomen. He passed a restless night, was in great pain, and was bled from the arm on the following morning. Leeches were applied in the afternoon, and about seven o'clock in the evening death ended the poor fellow's sufferings, about twenty-nine hours after the operation. *Examination of the body:*—There was a very large and sloughy wound observable in the perineum, and the scrotum was exceedingly dark coloured from ecchymosis," that is, a bloody froth. "The finger could be pressed to the prostate without difficulty, which was not deeply situated: indeed, it was the declared opinion of Dr. Hodgkin and Mr. Key that he had not a *deep perineum.*" Now, this is a perversion of the words made use of by both these gentlemen, for the purpose of introducing something you will hear of by and by. What passed between Mr. Lambert and Mr. Key was this: he went to Mr. Key, I believe, believing the man had a deep perineum; he said to Mr. Key, 'Sir, your straight staff will not do for a deep perineum.' Mr. Key said, 'You know nothing about it; I have operated on a perineum twice as deep:' and the straight staff had no more to do with it, I believe, than it had to do with Mr. Lambert's brain. "The cellular tissue throughout the pelvis was easily lacerable, and this was especially the case with the portion between the bladder and the rectum, admitting the passage of the finger with great facility, and to a considerable distance. There was a tolerably fair lateral section of the prostate and the neck of the bladder. The gland itself was larger than natural, and the portion which is designated the third lobe, presented a singular appearance"—I believe he is totally mistaken there, as to his anatomy. I need not, however, trouble you with that, for that is no discredit to Mr. Bransby Cooper—"being of the size of the tip of the little finger, and forming a kind of valve at the neck of the bladder. Part of this third lobe had a

dark-coloured appearance, and it seemed as if some substance had been resting upon it. The bladder itself presented nothing remarkable. The peritoneum, lining the abdominal parietes, was highly vascular, and there was a slight quantity of turbid serum in the cavity of the abdomen. The kidneys had a mottled appearance throughout their cortical substance. There are two or three points in this case to which we beg particular attention: first, the statement of Mr. B. Cooper, at the time of the operation, that he *could not reach the bladder with his finger*, as contrasted with the fact of the bladder being very readily reached in the *post-mortem* examination." Now, you see the fact was just the reverse, for the bladder could not be reached in the post-mortem examination till it was taken out of the body of the man, and then Mr. Lambert forced his finger up between the bladder and the rectum. "The man not having a deep perineum. Secondly, the circumstance of the finger passing with facility between the bladder and the rectum to a great depth, as considered in connexion with another declaration of Mr. Cooper, that he could not feel the stone with the forceps until the time of its extraction, although a sound passed into the bladder downwards from the penis, struck upon the stone, as was the case also on one or two occasions when a staff was passed at the perineal opening. The surface of the calculus was rather larger than the disc of a shilling, flat, oval-shaped, and apparently consisting of lithic acid." Now, you see, what is that intended to convey? It is intended to convey this: first, that Mr. Bransby Cooper, from a want of skill in performing the operation had made an incision which did not reach the bladder at all: secondly, that he thrust the forceps on somewhere, for the writer seems to think that if the incision had been made, and the forceps introduced properly, the stone would have come out at once: thirdly, Mr. Cooper had made a subsequent cut which still did not reach the bladder, that he thrust in the forceps several times, used great force and violence, and finally, that when he did extract the stone, he extracted it after a great deal of injury done to the parts; and the post-mortem examination is exhibited to show that the passage was made in another place, not in the right place, leaving it to be insinuated that it was done by the knife of the operator, and not by the secret and industrious finger of Mr. Lambert. Now, he did that to have it to exhibit an appearance of an instrument having passed through it. Well, then comes the next libel which you have not yet heard any thing of. "Our report of the operation of lithotomy at Guy's Hospital, in which Mr. Bransby Cooper, after employing a variety of different instruments, extracted the stone at the end of fifty-five minutes," and then there is a note, "we have frequently seen the operation performed by the senior surgeon of Guy's Hospital, in less than one minute." Then it goes on, "the average maximum of time in which the operation is performed by skilful surgeons, being about six minutes." Now, I am going to commit an unpardonable offence,—an unpardonable offence I know I am. An author who is vain of his works, never forgives a critic, and therefore I shall be scarified in "The Lancet." I know I shall be scarified by it for what I am about to say, but certainly I never heard before of an "average maximum of time;" an average is a mean. Now, I have heard of a mean, and I have heard of a maximum, but I never yet heard of a mean maximum, it is such an abuse of the vernacular language as I never heard before. "It has, as might have been expected, excited no ordinary sensation in the minds of the public, as well as among the operator's professional brethren. An attempt has been made to call in question the accuracy of our report in a letter signed by a number of the dressers and pupils of the Borough Hospitals, which letter had been inserted as an advertisement in "The Times," and also in "The Morning

Herald." Allow me to state, that on the very day on which the number of this LANCET purports to be published, comes out in "The Times" "that there is a report in THE LANCET of an operation performed at Guy's Hospital too shocking for them to insert, clearly showing that the person who sent it to THE LANCET sent it to them also. "The Morning Herald," however, inserted the whole of the case, but without the dramatic form in which it appeared in THE LANCET; so that Mr. Bransby Cooper, you see, had an enemy somewhere. THE LANCET being read only by medical men, the public and readers of the newspapers were also to be told of this operation, and the manner in which it was represented to have been performed. Mr. Lambert said, "I did not send it to them;" Mr. Wakley says, "You have no reason to suppose that I did it." How it got there, whether a copy of "The Lancet" containing it, or the manuscript report of the case, was sent to those papers, I don't know; but I apprehend Mr. Wakley will have to acquit himself of his connexion with it. "Some of the young gentlemen who have affixed their signatures to this letter were present at the operation; others who were not present at the operation, have, nevertheless, with a generosity more characteristic of their age than of their discretion, added the weight of their testimony to that of the eye-witnesses of the melancholy exhibition, and volunteered their approbation of Mr. Bransby Cooper's performance." This evidently alludes to some letter written by the pupils which I have not seen, neither has Mr. Bransby Cooper, and which he had no part in whatever. "Upon the value of this species of testimony, we shall make no comment, nor do we think it material that the document to which we allude, is signed, we believe, by not more than *one-third* of the number of young gentlemen present; had they all signed it, their united opinion of the skill, dexterity, and self-possession exhibited by Mr. Bransby Cooper on this occasion, is not likely to influence the judgment of the profession, whatever it may effect with the public." So that every one of the pupils who signed the declaration that Lambert's statement was false, and that Mr. Bransby Cooper had performed the operation with skill, their judgment is to be considered nothing at all; but if Mr. Wakley calls the pupils into Court, if he converts them into critics, and if they have had six months' experience, they are to be the best judges in the world. He can teach them—he and Lambert can teach them—so as to be better judges for the jury than any other men. It's certainly very happy and fortunate, for the sake of learning and science, that that is so. "The question to which the manner in which the late operation was performed is calculated to give rise, is not a question between Mr. Bransby Cooper and his pupils, but it is a question between a surgeon holding a high and responsible situation in Guy's Hospital, and the public. Of Mr. Bransby Cooper's amenity of manners, and kindness of disposition, we entertain no doubt." This is not Lambert's, it is Mr. Wakley's statement, for Mr. Lambert would not say so of a man who had threatened to turn him out of a room, you know. "And the letter in question may be regarded as a testimonial of the estimation in which a good-natured lecturer is held by the young gentlemen who attend his class. But the question is not whether Mr. Bransby Cooper is popular among his pupils, but whether he performed the late operation with that degree of skill which the public has a right to expect from a surgeon of Guy's Hospital; whether, in short, the case presented such difficulties as no degree of skill could have surmounted, in less time, or with less disastrous consequences, or whether the unfortunate patient lost his life, not because his case was one of extraordinary difficulty, but because it was the turn of a surgeon to operate who is indebted for his elevation to the influence of a corrupt system, and who, whatever may be his private virtues, would never have been placed

in a situation of such deep responsibility as that which he now occupies, had he not been the nephew of Sir A. Cooper." It is most extraordinary to me that a man's being the nephew of Sir Astley Cooper should be made the ground of reproach. I admit that a man's being a nephew is not a competent reason of itself only, but if he, being a nephew, and brought up by Sir Astley Cooper, and having witnessed his extensive practice for a very long time, surely he could not be the more ignorant for that, and for being the nephew! "This is the question, the only question in which the public is interested; and if Mr. Bransby Cooper is desirous of bringing this question to an issue in a court of justice, it will be for Mr. Harrison, the treasurer of Guy's Hospital, to enlighten the minds of the jury as to the circumstances under which the nephew of Sir Astley Cooper was elevated to his present situation. In the event of an action, we shall most unquestionably call upon Mr. Harrison to disclose those circumstances to the jury. In the mean time, we do not anticipate the decision of this question by positively impugning Mr. Bransby Cooper's skill; but we contend, as we have repeatedly contended on former occasions, that the inevitable tendency of making the patronage of hospital surgeoncies an affair of family influence, jobbing, and intrigue, is to occasion a cruel and wanton augmentation of human suffering, and to render frequent such heart-rending spectacles as that which was lately exhibited at Guy's Hospital." So that you see, this denounces Guy's Hospital as a scene for heart-rending sufferings, and as if those sufferings were occasioned there because Mr. Bransby Cooper is the surgeon there, and because he is the nephew of Sir Astley Cooper. Gentlemen, this article is of some length; it goes on to state—"We repeat, that there may, by possibility, have been difficulties in this case, which no degree of surgical skill could have surmounted in less time, or with greater ability, than Mr. Bransby Cooper exhibited; and it remains to be seen whether such difficulties can be shown to have existed. At present not a single material fact in our report is denied." Why is Mr. Bransby Cooper to publish in THE LANCET a denial of the facts? Does this gentleman think he is to hold the scales in his own hands, and that when he calls persons to account, every surgeon is bound to write to him, and give him his statements and reasons? This is a degree of tyranny we don't own in England; it's sufficient to answer in a court of justice as we have been doing to day. "At present, not a single material fact in our report is denied, though its general accuracy is vaguely questioned by the operator's pupils. It is not denied that nearly one hour elapsed before Mr. Bransby Cooper extracted the stone. It is not denied that the operator had recourse to the multiplicity of instruments enumerated in our report. It is not denied that the patient was subjected to extraordinary suffering—suffering which could scarcely fail to terminate in death; but no attempt has been made to show that this was a case of extraordinary difficulty. It is scarcely worth while to allude seriously to the document which has been put forth by Mr. Bransby Cooper's select pupils. But as these are the only panegyrists the operator has hitherto procured, we will put a case, which may enable the public to estimate the value of their approbation. Suppose it had been stated that, instead of employing 55 minutes in extracting the stone, Mr. Bransby Cooper had performed the operation in the usual time, say four or five minutes. Suppose it had been stated, that instead of manifesting great perplexity and embarrassment, Mr. Bransby Cooper had exhibited the utmost coolness and self-possession; that the patient appeared to suffer very slightly during the operation, and was removed from the theatre with every prospect of a favourable issue to the case;—let us suppose these and similar *false* representations to have been made in this Journal; and we will ask whether any of these young

gentlemen, friendly as their feelings are towards a teacher, whose good-nature is matter of greater notoriety than his science, and interested as they are in obtaining his good-will, and his certificates to enable them to pass their examinations at the College before his 'uncle,' who is the president of that benighted body;—we will ask whether any of these young gentlemen, some of whom did, and more than one-third did *not* see the operation, would have come forward to contradict a favourable, though a false, report. We repeat that we do not, as the case stands at present, directly and positively, impugn Mr. Bransby Cooper's surgical skill; but, as none of the material facts detailed in our report have been, or, we believe, can be, contradicted; we do not hesitate to say, that, looking to the circumstances attending this and other operations performed by this gentleman; in connexion with the circumstances—we believe that we are justified, and that Mr. Harrison, the treasurer of Guy's Hospital, knows we are justified in saying, the *extraordinary* circumstances attending his elevation to his present situation, justice, humanity, the interests of the medical profession, and the safety of the public at large, call alike for investigation. Whether this investigation be of a judicial character or not, we are indifferent. We are prepared to meet Mr. Bransby Cooper, if he think fit, in a court of justice; we will meet him in our own person." All editors are dignified, you know, they speak the language of kings; it is impossible those gentlemen can say I, they must speak in the plural. "For this will not be a case to intrust to a lawyer, however eminent or highly gifted, and we shall see whether Mr. Bransby Cooper will be equally prepared to meet us, the public, the relatives of the unfortunate patient, and Mr. Harrison, the Treasurer of Guy's Hospital." This is the individual's case that you are to examine into; and you have been trying it all day yesterday, as if this gentleman had obtained leave to file a criminal information against him for malpractices. Now, Gentlemen, I will trouble you only with one more effusion of wit, but which Mr. Lambert swears he did not write, First of all, it is reported in a previous Number of THE LANCET, that a patient on whom the plaintiff was to operate, had suddenly left the hospital,—then comes this epigram:

"ON THE PATIENT WHO SUDDENLY DECAMPED FROM GUY'S HOSPITAL.

"When Cooper's *nevey* cut for stone,
His toils were long and heavy;
This patient quicker parts has shown—
He soon cut Cooper's *nevey*." (*Loud laughter.*)

When a man applies a blister, he applies some little dressing afterwards to keep the wound open and flowing; so here, after the report of the case that was made, it was necessary that this little piece of humour and wit should come afterwards. Now, gentlemen, I have stated what I have to complain of, I state the proof I shall give. I will show how the operation was performed by the very person the defendant's witnesses admit to be the next best judge to the operator himself. I shall prove to you the falsehood of this statement respecting the post-mortem examination. I shall prove to you it could not have originated but in slander; we charge him with this; we bring him into Court to answer it, and he meets us thus:—first of all he says—he repeats the whole in terms, and says, "Yes, I have published it, and it was true." Next, he selects the same in charges, and says, "I do affirm that Mr. Bransby Cooper performed the operation, that he is not a skilful operator, and that he is not fit for the office;"—and the last defence is this, which is one of the most extraordinary I ever heard;—he says he is "The editor of a paper called "The Lancet," in which he publishes the reports of what takes place in public hospitals—what he means by *public* hospitals I don't know, for this

hospital is not supported by public contributions; it is open to those who go for science, and they never shut its doors against them, though, I hope, they will always shut them against those who go for the purpose of calumny. He says, "A reporter brought him this, and knowing nothing but that it was true, he thought his duty bound him to publish it; he did publish it, and he believes it to be still true." Now then, Gentlemen, you see to what we are brought if the editor of THE LANCET gets from a reporter, at eight guineas a-month, a statement of you and me, if we were in the profession, however false it might be, that editor thinks he is bound to publish it. Now let us see what this is to lead to, for I now take the only opportunity I shall have of replying to his case. He has not called a single witness in the box that does not entitle me to your verdict; he has not called one who does not falsify his pleas, because his pleas that justify are the only ones by which he can stand, or by which he must fall; moreover, he has not called two witnesses that do not contradict each other. I will show you contradictions in their testimony, which, if the question were to go to character, would be sufficient to destroy both. The defendant has called the author of the libel, and who has admitted, as far as the reluctance of a man will permit him to admit, the impure cause that induced him to make the report. I shall deal with that witness first. Now, it is confessed that upon two occasions Lambert had quarrels with Mr. Bransby Cooper. It appears too, that suspicion fell on Lambert, that he furnished to THE LANCET the reports which he did. It appears he was to have eight guineas a-month for supplying a certain quantity, and that all beyond that quantity was to be paid for by Mr. Wakley, according to his pleasure—that 's the admission. Mr. Lambert, on the occasion of a dinner, had made some remark that gave offence to the company; Mr. Bransby Cooper, with some others, went down the room to him, and insisted on his quitting it; they did not turn him out, as he said, but only insisted on his leaving it, and after some pains to recollect, he did recollect, and admitted, that finding his company was exceedingly disagreeable to all present, he left the room. Well, a man who leaves a room, is certainly not turned out; but if he is told that if he stays he will be kicked out, why then, unquestionably, he had better decamp. Upon another occasion, he is in the demonstrating-room, where he is suspected of being a spy to furnish materials for THE LANCET, and there he makes use of the word "bat," a term invented by THE LANCET for it is the fashion with THE LANCET to invent these words. Bat is the term applied to hospital surgeons, and, he admits it, for I put the question to him. I also asked, did not Mr. Bransby Cooper insist upon your quitting the room unless you made him an apology? "Oh," said he, "I certainly told him that I had meant no personal reflection on him, and was sorry for it." Did you not say that you would watch your opportunity and make him repent it? "I don't recollect that I did." Will you swear you did not, Sir? "Why, I am a warm man, and will not swear that I did not say so." Well, *will* you swear that you did not? "No I won't." Well then, here you have the man who is all but kicked out of the room, the man who made the apology to Mr. Bransby Cooper, the man who says he will not swear he did not state that he would watch his opportunity and make him repent it; you have that man making the report of the operation in this dramatic form, endeavouring to destroy that man; you have him going to the man who fees him with his eight guineas a-month, a pittance which a surgeon of any respectability would not consent to receive from a literary publication, with this report, and even Mr. Wakley, the man whom he supplies with the report, he thinks it too severe, and he lops off a part of it. Before Lambert does insert this report, he puts his finger into the place between the bladder and rectum, as you have heard described, and represents

that in such a way, as to lead one to believe, that Mr. Bransby Cooper had thrust forward the forceps there, which, unless he is ignorant to a degree hardly to be credited, he represents for the purpose, and in a way the most likely to be destructive to the individual against whom he had before vowed vengeance. I declare that in the whole course of my practice I never saw a case where the malice was so distinctly proved. Mr. Wakley is the man who is to answer here to-day; he is the man who is to profit by the publication, he has avowed himself to be so only yesterday; he has thrown his shield over Lambert, and he acknowledges himself to be the individual to protect the man who panders for the slanderer, and he must pay for it. Don't suppose, gentlemen, that the argument you heard yesterday, that he should have great regret to find that he had injured him, is to mitigate your amount of damages. What do you say of a man who had done his utmost not only to ruin you and your family, and destroy all your prospects in life, but still when you came into a court of justice to meet him, find him pointing the sword of destruction at your bosom, and then saying "if I have done wrong, I am sorry for it?" No, if Lambert is malignant, false, and infamous, you are at least as much, if not more so, because you, who are not actuated by that resentment, which might be some, but a very poor excuse for him; your object not being so much so, as that of making a deliberate traffic of the slander by which you get your £4,000 or £5,000 a-year, you have not the slightest apology for your conduct, for yours was a base, cruel, venal act, affecting a man who had never endeavoured to injure you, and for no other purpose than that of advantage, and putting gain into your pocket. The more popular the work, the more likely to effect the object. Nay, the newspapers are the precursors of your calumny, and somebody, for you have taken pains that those who are not medical men, should be informed that they may find something shocking; too shocking for ordinary publications, in the pages of THE LANCET. But the pupils it seems have published a letter, feeling indignation naturally to men of liberal minds, toward some one who had introduced himself among them. What happens? O, Lambert is not now on the stage; Wakley is so obliging as to publish in the next number, a declaration that he takes the whole to himself; he repeats it, and he points it, for though the first is a horrible tragedy to harrow up the feelings, yet in their minds it was not sufficient to convey the view to be taken of the surgeon, so that in the other number we find him treating Mr. Bransby Cooper as wholly unfit for the situation he holds, and therefore you have them both before you. Gentlemen, you are to judge first, whether the defendant has proved his justification or not. The only witness, as it appears to me,—the only witness who from his science and education seems entitled to any credit at all, is the first that was called, Mr. Alderman Partridge, upon whose testimony I should wish to make this observation, that if that gentleman possesses, as I hope he does, for neither I nor my client can have any feeling against him,—if he possesses that sense of honour which ought to guide honourable men in the science he professes, I hope he may not be deceived, and trust he may profit by this observation, that in all cases where a surgeon is called upon to operate on the human body, it is, in the language of one of Wakley's own witnesses, an act of rashness and presumption to pass a judgment on the operation, without some explanation from the operator of that which may appear ambiguous. What would Mr. Alderman Partridge say, if some pupil, nay, if Sir Astley Cooper were to witness an operation of his that might last for an hour, and that has happened to greater men than Mr. Alderman Partridge, and Sir Astley Cooper perceiving some matters that he should have thought differently of—something that he would not have done, should turn round and publish to the world, or in a court

of justice, his opinion of it? Ought there not rather to be that sort of feeling that would cause him to turn round to the operator, and say, 'Pray, tell me the reason of the delay; because, if you, with your finger only, could know what the difficulty was, there may have been some reason for it, which I am ignorant of; and it is not fair, it is not candid, to publish any thing against another, without giving him an opportunity of explaining.' But if you don't ask him, ask the assistant surgeon, the next best judge—'Can you, Sir, explain why the operation lasted so long? Can you disclose to me why the straight forceps, instead of the bent forceps, were used in this case?' But, Gentlemen, that was not done; and Mr. Alderman Partridge must allow me to say, however high his character may be, that his conduct wants that delicacy and candour which every man ought to have before he comes into a court of justice to pass a judgment on a competitor in his own profession. But let us look at his evidence: he says, and in that he gives some advice to his friend—in the first instance, he says he had no doubt that the knife reached the bladder, whereas the libel gives a doubt all the way through. He says he has no doubt it reached the bladder; and when I pinned him down to the language of the report, and wished to have his opinion upon the part which says the knife went "somewhere," he is obliged to admit that that is intended to convey that the knife did not penetrate the bladder: so that the very first man who comes forward on behalf of the defendant, and who swears at first that the report is true, states that the language of the report is intended to convey that which is untrue. He then says that the stone was lying over the pubes. Why, that astonishes Mr. Wakley; he had never heard of such a thing. "Why, Sir, allow me to request that you will recollect yourself." "I do recollect." "Well, could the stone be lying over the pubes?" "O yes!" he says, "why, I have had two or three cases myself where the stone lay above the pubes!" Why, that's a knock-down blow to Mr. Wakley. Now, I don't like to take wagers, but I think I might take the odds—Mr. Lambert might take the odds, that his friend, Mr. Wakley, never performed the operation. His operation is not of that sort; he does not cut the body, but he cuts the mind. Then he goes on to say, that if the stone lay above the pubes, he conceived, by depressing the handle of the forceps, and pressure upon the abdomen, he could have got hold of the stone. Well, then, it would have been but candour, and fair, for him to have gone to the operator for an explanation of the difficulty he had met with: if he had inquired, what made him not bring out the stone sooner? Because, the operator would have said, he had no idea of the situation of the stone, or he would have extracted it before; that is, if he did not know in what situation the stone was, how was it possible for him to apply the sounds or the bent forceps in any other way than he did? Such is the value of Mr. Alderman Partridge's evidence. Now, the next gentleman is Mr. Clapham; and Mr. Lambert would not forgive me if I passed him over without a comment. He is a witness, a witness of truth and not of falsehood; but then he has no objection to carry a false certificate with him. You will recollect that I asked him, What age are you? "Oh! twenty-one." When were you twenty-one? "I don't know." "Don't know?" says my Lord. "My Lord, I am not twenty-one yet." When were you twenty? "I was twenty last January." Yet he was introduced, you heard, in order to give weight to his testimony, as a licentiate of the Apothecaries' Company. I am practising; practising as a surgeon. I am not exactly practising; I am with my father." "How did you get your certificate?" "I got it—I got it——" "How did you get it?" "The clergyman generally writes it." Now, Gentlemen, did you believe that the clergyman fabricated the document? My

Lord, very properly, would not allow the question to be put, for it is a rule in our Courts, and it would not do if it were otherwise, that a man is not bound to criminate himself. And who is that man of perfect science and knowledge? He is one of Lambert's first cousins; but Lambert, of course, denies all knowledge of this transaction. He says Mr. Bransby Cooper applied the knife but once; that is, the knife in contradistinction to Sir Astley Cooper's. I saw the urine flow; I should not have reported that the knife did not go into the bladder. I believe it did go into the bladder. Well, then, here is a second contradiction in the testimony given for the defendant, for he distinctly swears that the knife did go into the bladder. Now the next witness is Mr. Gilbert, and I own I was certainly surprised at his news. I thought, from his hard features, that he was much more likely to be a hostler at a country-inn than a surgeon, and that he, perhaps, kept the Beaminster coach-horses, and took care of the carriages, probably, that arrived at the inn; but he is, at it appears, one of the assistants of Mr. Phelps, a surgeon—I don't know whether he carries out the medicine—and he is confident that the instruments were used with great and unnecessary force and violence. After the incision had been made, the operator carried the knife forward between the bladder and rectum. They have got a man to swear it at last, and he does it boldly, he does not mince the matter at all; he swears it is so, just as if he knew it, yet he neither saw it, nor did he see the post-mortem examination, because, he says, he remained till he could bear it no longer. "My sensibility was overcome, the scene was so horrible, and I was obliged to leave it." Here is a witness for you. The operator *poked* the forceps about in a way that affected this poor man's feelings, that he was afraid of becoming faint, and he retired. Well, but I said, if this be so, it is impossible any urine could have flowed from the wound. "O, quite impossible!" "Well, if any of the other witnesses whom the defendant has called, have said that urine did flow, they are perjured?" "O, yes, they are perjured." Decidedly perjured? "O, perjured—clearly perjured!" Well, but then, Mr. Wakley, this is a curious way of proving your justification. Then I come to the next witness, and I go hastily over them, because the observations I make, if not retained by you in your memory, will assist me nothing. The same man, however, says, he supposes THE LANCET may bring in the Editor from £5,000 to £6,000 a-year. He says, the operator put the instruments in as if he meant to stab the man; in short, he comes to the mark at once, and says he meant to *murder* the man, and Mr. Wakley wished that to be believed: he thinks he cannot do better than bring forward a witness who will swear it at once, just as much as Mr. Wakley intended to murder Mr. Bransby Cooper as to all his future reputation. Well, having got the man, who, I thought, would go all lengths, I asked him, if Mr. Bransby Cooper was a very bad operator? "O certainly, very bad, very bad; I never saw him perform any thing well but once." What was that? "Taking up the subclavian artery." Now when I was a young man, and before I spent so much time in the air of this Court, I did sometimes give attention to, and cast my eye over, some medical books, and I really thought that tying up the subclavian artery was a very difficult operation; but that is not Mr. Wakley's opinion, for he thinks any ignorant man might do it by chance; and, says Mr. Gilbert, lithotomy is the thing; but as to tying up the subclavian artery, oh, a hostler at a country-inn might do that. Well, then, we come to Mr. Thomas, who is the demonstrator at a school in Dean-street in the Borough, established on the 1st of October, belonging to a gentleman of the name of Sleigh, living in Seymour-street. Well, I don't mean to say that it is not a better school than that of Guy's; it has not had time yet, and consequently

we have not had Clines there, we have not had Coopers from it, but then we may have. "Well," Mr. Thomas says, "I mean to give it as my opinion, from my impression, that the operation was performed in a bungling and unskilful manner." Well, as Mr. Wakley did not press him with details, I put a few questions to him, and I found that he is a contributor to THE LANCET; he says, he has made four contributions to it in the whole. Now I should put it to you, whether a contributor to THE LANCET is the very best judge of skill, or veracity either, that can be called before you? Well, what happened? "Oh, I arrived subsequent to the incision into the bladder, and stayed for half an hour. I saw nothing used but the scalpel." Did you not see Sir Astley Cooper's knife? "I never heard of it?" Why, here is a demonstrator who never heard of a knife which is used in one of the greatest schools in the metropolis! He has not happened to have used it, and he never heard of it. The operator used nothing but the scalpel. Not the gorget? "No; I cannot give the details; it was a bungling operation. My impression was, that it was a bungling and unskilful operation." The impression of a man of profound science, no doubt, and the opinion strengthened very much by the testimony of the other witnesses. The next witness is Mr. Pearl, whom I reckon as invaluable; the weight of the value his testimony possesses, is above that of his own name. What says Mr. Pearl? Oh, he now gives us a new fact, which even the libeller did not give us. He says, the operator put three fingers into the wound, and turned them round, and that could only have been done with the design of murdering the man; and if you believe that gentleman, I desire you will convict Mr. Bransby Cooper, and that my Lord will send him to be hanged directly. He says, "I think the report is correct, all but 'my uncle's knife;'" he did not say that, but Sir Astley's knife: yet we have "my uncle's knife" put into the notice, and into the body of this report. He says, "I saw the gorget introduced along the staff:"—now that happens to be entirely false, for the gorget was not introduced along the staff, but along the finger of the operator. The bladder was thickened. This gentleman, I think, states that he commenced his attendance in the hospital in the October before, and this operation took place in the month of March. He had never seen an operation in his life until he came to the hospital. Well, I thought it right to examine him, for I supposed he was a little shy about the post-mortem appearance, and it occurred to me, that he had been a little lectured. Now he was at Lambert's house—Mr. Wakley was there: they conversed together on this subject. What was the conversation upon? "Upon this subject." Had you any exhibition of the parts? "No." You do not yourself swear that you think the knife entered between the rectum and the bladder? "No." Did they try to persuade you of that? At last he said, "Why to be sure they used very good arguments to show that it was so." Well, were they not persuading you to believe it? "I will not swear they did so, but they used very good arguments to make a person believe it." Now, what is the meaning of a man who has published a libel, to get hold of a witness at the house of the author of a libel, and using every argument to get him to believe that such was the case—a fact which the witness could not prove? What think you of the credit that is due to such testimony? Can any language have a term sufficiently expressive that you, as a jury, ought to feel towards a person who is to tamper with a witness that is to be brought before you in that way—a person who is to take hold of witnesses, and deal with them in this manner. Well, he said, I formed no opinion upon the question, whether the forceps were passed up between the bladder and the rectum, or not, which he was finally brought to say; at first he said they gave good reasons for believing that that was so. So much for Mr. Pearl. Mr. Lambert's evidence

I have already observed upon. There is, however, one fact more I have to observe upon to you, "as he is a man of science," and which is, that he is decidedly of opinion the knife did not reach the bladder. Why? Because there was no gush of urine. Well, I said to Mr. Lambert, did you see no gush of urine at any time? "No, I did not." Well, then, if the incision into the bladder was to depend upon the gush of urine, according to this part of his evidence, nothing must have reached the bladder, but something must have cut into it, for the forceps entered it, and got the stone out. Why, if the man is consistent, he must think nothing touched the bladder. He admits that, while his own account shows he has not a reason for the faith that is within him—he is inconsistent, he is ignorant. Well, Gentlemen, he is the man who is the author of this libel, and who has disciplined the witnesses, trained them up to give evidence before you, laboured with all his zeal to serve himself and his friend, because he acts under an awful responsibility; he has not the means, I dare say, of indemnifying Mr. Wakley; Mr. Wakley has the power of taking from him that pittance he receives for his contributions, and if in his evidence he falls back from supporting that which he has been the author of, will he, think you, have any house to return to? Will Mr. Wakley praise him in the next LANCET? Will he cast him off? Such is the testimony of the man on which you are to rely. Lastly comes in the master of science, Mr. Lee. Now really, I must say, when Mr. Alexander Lee was asked for his opinion respecting the skill of a professional gentleman, I was induced to put a question to him, and out came it that he had been a potato-merchant. From the manner he gave his evidence, I certainly don't wish to disparage him in any way whatever. That he is a regular surgeon is out of all question, for that he could have been that and given up and forgotten all his former craft is not very likely. The defendant introduced him as Mr. Bransby Cooper's friend. "Friend! I never spoke to him in my life!"—Well, was it a long operation? "Yes." Can you account for the difficulties? "No, the operator is the best judge—he is the man to account for them." Have you known operations as long? "I cannot say I have." Was there any thing that struck you there which could have been done with greater skill? He could not say so. I asked him whether he conceived it was competent for a man to give an opinion on such an operation, without first speaking to the operator upon it? He said no, certainly, ambiguous circumstances alone could be explained by the operator; and he said that which I meant to have given you, and which I hardly expected to have got from Mr. Wakley's own witnesses, that it was most rash for any person, and a pupil too, to give an opinion without first asking the operator the cause of the difficulty. Well, then, he says he owes an explanation to the class. Mr. Cooper lectures almost every day, and, for any thing I know, he may have made that explanation to them. I apprehend he is not to be told by them to make his explanation. I believe I can show you a case in which Mr. Cline himself said, turning round to his class, "Gentlemen, there is not one of you here who cannot tell as well as myself what was the difficulty." The most skilful operator sometimes has met with those cases. Mr. John Hunter operated on a man for an hour and a half, and could not at last extract the stone. It was afterwards found there were two stones in his bladder: and who doubted his skill? I dare say if he had lived till this time THE LANCET would have doubted it. Now, gentlemen, I come to Mr. Harrison's evidence, and it is, I trust you will consider, a refutation to the charges in THE LANCET, that Mr. Bransby Cooper is not a good surgeon, and that he was placed in Guy's Hospital through corrupt influence. The defendant has had the audacity to say he will meet Mr. Bransby Cooper in person in the Court, and that he must also face Mr.

Harrison here. I had not the honour, Gentlemen, of knowing Mr. Harrison till yesterday but by reputation, and I have always understood him to be one of the best of men. He has proved, that when he wished to make Sir A. Cooper consulting surgeon to the hospital, Sir Astley Cooper knew nothing of it; indeed, when it was communicated to him, that he was not quite satisfied in his own mind upon it; and at that time it was, he meant to put Sir Astley's nephew forward into the situation of surgeon. Why was that so? Because of his assiduity and the skill he had shown. It was not in consequence of any invidious comparison between him and any other man; he had given lectures occasionally, and without making unfair comparisons between him and Mr. Callaway, he was considered the person at that time best fitted to fill the office. Mr. Harrison has disproved the libel entirely, and I ask for damages then. It is not enough for it to go abroad when Mr. Bransby Cooper's character is thus attacked, a man of character and honour in his profession, and upon the maintenance of which depends his means of supporting himself and his family—I cannot allow this cause to go abroad to be published in THE LANCET, and other publications, that it was by some slip in the pleas that the plaintiff obtained a verdict; no such thing, I would not accept a verdict on that ground. The defendant is to prove the whole, and I cannot let this cause go out of court, without giving an opportunity to his friends of being heard, who have come forward voluntarily to give their opinion as to his skill and ability; they were not present, except Mr. Callaway, at the operation, but they can speak to the general character of Mr. Bransby Cooper, which this man has attempted to defame. I shall call men from different hospitals, who have been competitors of Mr. Bransby Cooper, but all honourable men. I shall call those before you who, if they had any feelings, which they have not, against Mr. Bransby Cooper, would allow them to subside, and tell you, and I will tell you, that for his age he is a most competent and skilful surgeon. I shall call a physician, bred a surgeon, who has known him for a great many years; and that physician meaning to make his own son a surgeon, has selected Mr. Bransby Cooper to apprentice him to, which will show the opinion he entertains of him, and that is one of the most able and celebrated physicians in the city of London. I shall call a gentleman, not as having any particular interest or connexion with Mr. Bransby Cooper—I speak of Dr. Roget, the nephew of my illustrious and ever-to-be-lamented friend, Sir Samuel Romilly—who has given anatomy his closest attention, and is one of the most celebrated for the study of physiology. I shall ask that gentleman his opinion, and he will tell you that Mr. Bransby Cooper is a man of skill. Gentlemen, when the case is closed, Mr. Wakley will have the singular advantage of replying, a thing never heard of in a case of libel before. But your verdict must be for the plaintiff; if I were to sit down without calling a single witness, your verdict must be for the plaintiff, and then the only consideration will be the amount of your damages, and upon which let me say a few words. Gentlemen, I am happy to see men in that box of education and understanding. There is a certain class of cases in which it requires the ability of high-minded and honourable gentlemen to enter into the feeling of them; and though those feelings exist in the minds of most men, yet we know that men of education, and who are in the habit of seriously considering these things, find the best means of bringing into a jury box that species of feeling which it is absolutely necessary should be found there. Every man in England is at liberty to publish what he pleases. God forbid that that liberty should be abridged! But that liberty would become the source of the most bitter tyranny that ever an unhappy country laboured under, unless in those instances in which that freedom is abused, some consti-

tutional tribunal did exist to correct it. That tribunal, Gentlemen, you are. You will be pleased to recollect how much in modern times the circulation of the press has enlarged the fame of some individuals. Consider that honour and fame are greater to feeling minds than fortune. Consider that when those are attacked, in proportion to the extent of calumny, unless there be some reparation made to the feelings of an injured man, unless society is protected against such attacks, to what resource is the man who is attacked driven? Lord Bacon says, that revenge is a kind of wild justice; the same Being that made us reasonable, made us also resentful, and if a man's resentment—bottomed on the reasonable feeling which induced him to look to his fame as his proudest possession—if that resentment is kindled, justly kindled, and he finds in his country no means of having it appeased by some verdict that will stamp the nature of the attack, to what course is he driven, into what condition is he plunged, *and who can blame him if he takes into his own hands the justice which a jury of his country will not give him?* Away, then, in a case like this, with any notion of temperance. I say that INDIGNATION, where it is justified by the facts, is a feeling that goes hand in hand along with justice. What is the attack made here? An attack made in bitter enmity upon the fame of an honourable man. Not only is the attack made on his character and honour, but in seeking to take away the bread from himself and his family, to blight his prospects in future life, and hold him up to the finger of scorn, ridicule, and injury. This is what he complains of, and you are called upon to give him reparation for it. I remember when a man, in the inferior walks of my profession, Mr. Kay, was charged with some unprofessional conduct, where the case was marked with calumny, and indeed founded in calumny, the jury of the city of London thought proper to give 1,000*l.* damages. I remember another case, where an author, a much better writer than Mr. Wakley, was brought into this court; he defended himself, and with much greater ability than Mr. Wakley, but a jury of this court thought proper to give a greater amount of damages than what Mr. Kay had received. Gentlemen, I point out no course. It is not by what one jury has done, or what another jury has done, that you are to be guided, but you alone are to mark what distinction you think exists between honour, purity, and integrity, and calumny, and the sordid feeling that induces a man to attack another for the gratification of his own advantage. You are to mark what is due to society, who are now placed in your hands, in the name of Mr. Bransby Cooper, against calumniators who circulate slander after slander. You are to determine whether you will give the defendant a new triumph—whether this day, by damages that he will consider temperate, you will give him a new source of triumph. The public look up to your conduct on this occasion; and I declare before heaven, if I could but inspire you with my feelings, there is no amount of damages to the whole extent laid in this declaration, I should not think you bound in honour, in virtue, in duty, to give to Mr. B. Cooper; not that Mr. Bransby Cooper wishes to make a sordid traffic of this case. But look at this attack, an attack which few men would have had the courage to bring into a court of justice, and no small pains have been taken in some quarters to prevent him. He comes here, and instead of meeting with any thing to soothe his feelings, the man who has injured him probes and lacerates the wound deeper and wider, and by the course this has taken in consequence of the attack lasting the whole of a day, it is by this time spread over all the kingdom, and in a few days will be over all the world, without an opportunity of any thing being heard which was to be said against it. You, Gentlemen, are to say by your judgment this day, whether you think men's characters are to be so dealt with—whether they are to suffer such base attacks as this—whether you think

they are not such as call for the most powerful restraints—or whether they are mere *mala prohibita*, as if it were only an act of getting over your neighbour's hedge, and shooting his partridges. But, Gentlemen, there are distinctions, and I beg to ask any man, let his rank be what it may, what he would take to have his honour, his skill, and his integrity assailed as Mr. B. Cooper's has been? More than that, if he were a man with a rising family, what would he take to have all his and their prospects blasted by the breath of a slanderer, and to be told that a jury of his country thought him entitled to damages, but that they thought it right to make it a moderate amount of damages? I shall leave Mr. Bransby Cooper in your hands. I am sorry I have detained you so long; I shall now call my witnesses, feeling it would be perfectly safe to leave my life in the hands of Mr. Bransby Cooper, which I declare at this moment I should have no hesitation to do. I think it also perfectly safe to leave him and his case in your hands, with the feelings of honour I know you possess. O, Gentlemen, a gentleman has just favoured me with a piece of evidence which I ought to have produced before, but which I have a right to produce to you now. Mr. Clapham, you will recollect, swore that he took no oath respecting his age. Mr. Lambert swore he knew nothing of his getting his certificate. Now, the certificate of moral character was written by Mr. Lambert. It purports to have been written by him. Clapham may have forged it, I cannot produce it, and here is his oath of his age.

The numbers of THE LANCET, containing the alleged libels, and also the number containing the epigram, were put in as evidence, and read by the officer of the court.

Mr. Thomas Callaway sworn. Examined by Mr. Pollock.

Are you a surgeon? I am.

Where do you reside? In the Borough.

Lord *Tenterden*. And assistant surgeon at Guy's? Yes, my Lord.

Mr. *Pollock*. Are you the assistant surgeon at Guy's Hospital. I am.

How long have you been in the profession? Seventeen years.

Lord *Tenterden*. That is from your first study? From my apprenticeship.

Mr. *Pollock*. Were you one of the pupils at Guy's Hospital? I was.

Have you seen most of the operations of importance that have taken place there? Nearly all.

Have you been present when both Sir Astley Cooper and Mr. Bransby Cooper have operated in cases of stone? Yes, I have.

Have you ever yourself operated? I have.

How often? Six times.

Lord *Tenterden*. For lithotomy? For lithotomy.

Mr. *Pollock*. How often have you seen Mr. Bransby Cooper operate in cases of lithotomy? Several times—I don't know the precise number.

Now, Sir, you were present on the occasion in question? I was.

In what character were you there? As the assistant surgeon.

Was it your duty to assist personally in the operation? It is usual for one or other of the colleagues of the surgeon to assist—on this occasion I did.

How long did the operation last? I think about fifty minutes.

You, I believe, held the staff? I did.

After he had cut through the integuments, do you remember Mr. Bransby Cooper's making the first incision? From the position in which I stood holding the staff, I could not see the incision, standing on the left side of the patient, and behind him rather.

Were you able to judge whether he reached the bladder, or not? I very distinctly felt Mr. Cooper cut into the staff—into the groove of the staff, that is.

Which you had in your hand? Which I had in my hand.

Now, is that a point about which you entertain any doubt? None whatever.

Then the knife passing in the direction, you felt, holding the staff, it would go,

must it cut the bladder, or go any where else? On feeling Mr. Cooper cut into the staff, it is one of the preliminary steps when the surgeon gets the knife into the groove of the staff to deliver it to the surgeon; he then takes the staff, and passes the knife into the bladder.

Had you any doubt then that the knife did pass into the bladder? I had none.

Were you present at the examination of the body after death? I was.

Did you then find any reason to doubt the opinion you had formed of the knife having gone into the bladder? None.

Did you, on the other hand, find any reason to confirm you in that opinion? In the post-mortem examination I saw nothing that induced me to have a contrary opinion.

Now, Sir, I would generally ask you whether any person can so well judge of the difficulties of the operation as the person who is actually performing? No one can form an adequate opinion of the difficulties of the operation but the operator.

Next to the operator himself, do you think that you would possess, as the assistant, the best means of explaining the difficulty that occurred? I think not.

You think not? I think not.

Your situation as assistant would not make you better acquainted with it than what other persons around might see? Not more than a common spectator.

Were you able to judge, from the whole operation, whether this was an ordinary case, or one of difficulty? It was evident there was considerable difficulty in feeling the situation of the stone.

After the opening into the bladder, we understand the forceps were used? They were.

Could you form any opinion whether they went into the bladder or not? I cannot from personal experience of that operation, but I should say that no man would feel himself justified in introducing the forceps on his finger, unless the impression conveyed by feeling convinced him that he was in the bladder.

Have you any doubt that the forceps went into the bladder? None.

I mean after the first incision? None.

What was the position of the stone in this case? It appeared to be at the anterior part of the bladder behind the pubes.

Was it high up or low? High up.

Does that situation account to your mind for the forceps not finding it? Very satisfactorily.

Whether the straight forceps or crooked forceps? Straight or crooked.

From the weight of a stone, where do you generally expect to find it in the bladder? At the inferior part of the bladder.

At the bottom of the bladder? Yes.

Lord *Tenterden*. I would rather have your own words, Sir? At the inferior part of the bladder in the hollow of the pelvis.

Mr. *Pollock*. Is that the place where it is found in a large majority of cases? In the majority of cases.

What was the shape of this stone? An oval flat stone.

Does that shape serve to explain to you why it should be in the situation you have mentioned? No, it does not.

Does it explain how the forceps happened not to find it? It readily accounts to me why it eluded the forceps.

Now, finding that the forceps did not get hold of the stone, what did Mr. Bransby Cooper do next in the course of the operation? He tried various forceps, several forceps, straight and curved, and other instruments which are usually resorted to in difficult cases, as the scoop, very commonly the scoop.

Lord *Tenterden*. You don't speak so loud as to enable yourself to be heard properly—the scoop, I think you said, was one of the instruments used on that occasion? It was.

Mr. *Pollock*. Now, were you present at any operation when they sounded in this case to see whether there was a stone? I sounded the patient on the table before he was cut.

Had you any difficulty in ascertaining the existence of the stone with the sound? It was not found in the usual manner, it was detected on its withdrawal, and there-

fore gave us the impression that it was directed forward by the concavity of the instrument, and not by the convexity of it touching it.

If the stone were in the situation you have described, would it be perceptible in that way to the sound, and yet elude the forceps? Yes, certainly.

Lord *Tenterden*. Let me ask, does the instrument you call the sound, derive it's name from the sound? Yes, by the chink of the sound.

Mr. *Wakley*. I could not understand the last observation? Lord *Tenterden*. By the chink—by the sound upon the stone, the instrument derives it's name from that.

Mr. *Pollock*. Now what sort of a person was the patient; was he a large man or a small man? A stout man.

Now, though he might not have a deep perineum for him, did you try the perineum to ascertain whether it was a deep one or not? During the operation Mr. Cooper asked me to try, and I could not reach the bladder with my finger.

Did you reach the prostate gland? I think I did, but I am not certain of that.

But you are quite certain you did not reach the bladder? Certain I did not reach the bladder.

Lord *Tenterden*. You think you did reach the prostate gland? I did not reach the bladder, and I am not confident that I reached the prostate gland.

Mr. *Pollock*. But you think you did? I think I did, but I am not confident.

Now in this state of things was it necessary to enlarge the opening? I think it was.

Now what was done for the purpose of enlarging the opening? A beaked knife was used—a knife having a probe-pointed beak, as we call it.

Lord *Tenterden*. Is that the knife that is called Sir Astley's? Sir Astley's.

Mr. *Pollock*. Was that used? It was used.

Did that increasing of the opening into the bladder require time? Yes.

For the purpose of doing it with caution? With caution and care.

Was the opening made with the knife, or was any other instrument introduced? A cutting gorget was afterwards used.

Lord *Tenterden*. For the same purpose? For the same purpose, to enlarge the opening.

Mr. *Pollock*. Was a blunt gorget used also? I do not recollect, but I think not.

What is the advantage of the gorget? It acts as a director to the introduction of the forceps.

Lord *Tenterden* Does a cutting gorget do that, Sir? Yes, my Lord.

Mr. *Pollock*. Does it also limit the opening? It also limits the opening; it can only make an opening to a certain extent, to that extent to which it has a cutting edge.

And is the opening it makes generally sufficient? Generally, quite sufficient.

Now, if the opening had been large enough before, would the cutting gorget do any thing? It would do no injury, because it was introduced on the finger, so was the knife directed by the finger of the operator.

If the opening was not large enough, I presume it would make it larger? It would make it larger.

In the result, Mr. Bransby Cooper extracted the stone? Extracted the stone.

Now did Mr. Bransby Cooper use the proper means to get the stone, being in the position in which it turned out to be? I think he did.

Was any great and unnecessary violence used? I think none.

Were any instruments used except those that were necessary to meet the apparent difficulties of the case? I think none.

In your opinion, ir, was the operation performed properly and scientifically, or in a bungling and clumsy manner? I think it was performed, under the circumstances of very considerable difficulty, with as much care as the case could possibly receive.

Was the delay that occurred in the operation, occasioned by the difficulties presented in the case, or was it owing to Mr. Bransby Cooper's want of skill at the time? I think entirely in consequence of the situation of the stone; the difficulty in detecting it.

Now, Sir, you have witnessed, as you say, many operations of Mr. Bransby Cooper's? Certainly, Sir.

Is he a skilful surgeon, generally? Yes, certainly.

How many years have you known him? I believe now, nearly 20 years; I think now, 20 years.

Do you know of his having been abroad with the army in the Peninsula? I have had the pleasure of his acquaintance during that period.

Did you correspond with him? I did.

Did you know of his serving in the Peninsula? In the Peninsula, and also in America, as an army surgeon.

Do you know of his having been at Norwich? I do.

For what purpose? He was attending the Norwich Hospital.

Is that a hospital much celebrated for cases of lithotomy? Very much so; more than any other county hospital in the kingdom—more than any other county hospital with which I am acquainted.

Do you know of his having been at Edinburgh? I do.

How long? Certainly one year, and, I believe, two.

Was he there studying medicine, do you know? He was.

Generally, then, Sir, is he a person of skill in his profession? I think so, certainly.

Do you think he is fit to be one of the surgeons of Guy's Hospital? Certainly.

Is he there the lecturer on anatomy? He is.

Now, Sir, did you attend the post-mortem examination? I did.

Who actually conducted the dissection? Dr. Hodgkin.

Was the bladder examined? It was.

And the rectum? It was.

Lord *Tenterden*. In your presence? In my presence.

Mr. *Pollock*. There 's cellular substance between them, and around the bladder, is there not? There is.

Was your examination such, Sir, as to enable you to see whether the forceps had ever been thrust with violence into the cellular tissue between them, and not going into the bladder? I saw nothing in the post-mortem examination which led me to a suspicion that the forceps had gone between the bladder and the rectum.

If any such injury had been done by violence, must you have observed it in the post-mortem examination? I must have observed it.

Would there have been any extravasation of blood? Yes; there would have been an extravasation of blood into the cellular tissue connecting the bladder with the rectum.

Was there any such extravasation? None.

Was there any laceration of the cellular tissue? I saw none.

Now, did you find the patient had laboured under any disease of the kidneys? He was an unhealthy man.

Now, Sir, have you seen other operations of difficulty? I have seen many operations of difficulty.

In cases of stone? In cases of stone.

Have you known a long time employed in other operations? Yes, I have.

Is the length of time alone any criterion of the skill of the operator? None whatever.

Have you known Mr. Bransby Cooper perform the operation in a very short time? I have seen Mr. Bransby Cooper perform the operation in about fifty-six seconds, or about a minute: in an operation since that in rather more than a minute.

Was that operation attended with success? Yes.

Do your read "The Lancet" from time to time? I do.

Was any notice taken of that operation performed with success? No, I don't think there was.

You have not seen that reported? I have not seen that reported.

Were you present when Mr. Bransby Cooper tied the subclavian artery? I was.

Now, do you agree with the witnesses who have spoken, that an ignorant man may tie the subclavian artery? I cannot suppose a man tying the subclavian artery to be ignorant.

Is it an operation of ease, or an operation requiring great skill? It 's an operation of very great difficulty, and requiring the most perfect anatomical skill.

Now, which of the two operations requires the most skill and science, cutting for the stone, or tying the subclavian artery? I think tying the subclavian artery.

Now, Sir, you who have been present at a great many operations, I would just put this question to you--Can any by-stander appreciate the difficulties, or fairly estimate the difficulties, unless somebody to whom the operator explains the difficulties, except the operator himself? Certainly not; no by-stander could appreciate them, I could not myself; I was obliged to inquire of him.

Now, Sir, would you, as a gentleman of science and experience, form a judgment of an operation, and on the degree of the operator's merit, without communicating with him on it? Certainly not.

Cross-examined by Mr. Wakley.

Mr. *Wakley.* I wish to have the preparation brought up again.

Lord *Tenterden.* I don't know whether it is here or not: you wish to have it brought in, in order to cross-examine this gentleman with a view to it? (Mr. *Wakley.* Yes, if you please. [*The preparation was now produced.*] My Lord, I must state to your Lordship that it is quite impossible to examine the preparation, so as to ascertain the state of the parts, unless it be removed from the glass.)

Lord *Tenterden.* Can any information be obtained if it 's taken out of the glass? *Witness.* I do not know, my Lord.

Lord *Tenterden.* Then it must be taken out to see. *Witness.* I have seen the preparation before it was put up in the glass, therefore I have no wish that it should be taken out now.

Sir *James Scarlett.* Is it necessarily in a different state now than when it was removed from the body? None whatever.

Mr. *Wakley.* Was it removed from the body in spirits, Mr. Callaway? (*Loud laughter.*) No, it was not; you know that as well as I do.

Sir *James Scarlett.* The difference of colour? The difference of colour is from the spirits.

Mr. *Wakley.* It is stated that the stone lodged on a sort of shelf on the pubes; now, I wish to see that: the stone must have been in the bladder, my Lord.

Lord *Tenterden.* Yes, one of your witnesses, Mr. Alderman Partridge, I think, yesterday said he could form no opinion of it, unless he saw the bladder in the inside.

Mr. *Wakley.* If the bone had been here, the shelf would have been seen, if there was a shelf; and if there had been a shelf in the bone that would have been here. I shall remove it, my Lord, from the glass, if you will allow me.

Lord *Tenterden.* Well, if you think any thing is to be derived from it you may; the curator will do it.

Witness. Dr. Hodgkin will do it.

[*The preparation was then removed by Dr. Hodgkin from the glass, and the stone was also produced.*]

Lord *Tenterden.* Was the other side (of the stone) convex like this, Sir? *Witness.* Yes.

Lord *Tenterden.* It 's larger than a Windsor bean.

Mr. *Wakley.* Mr. Callaway, did the post-mortem examination, in this case, take place in public? It did.

Was there any notice of it given? I really don't know whether there was or not; the hour at which it took place was twelve o'clock.

How many persons were present? I really don't know.

Can you form no idea? Perhaps thirty; as many as usually attend examinations.

Did you pass your finger through the wound in the perineum in the post-mortem examination? I did not.

You state that the stone was lodged under the pubes? Behind the pubes, I said

Behind the pubes? Yes; the anterior part of the bladder.

Was it attached to the bladder? That I cannot say.

If it had been attached to the bladder, would not the state of the bladder have shown it after it was removed? No, I think not.

You think not? I think not.

Not, if it had been attached so firmly that the striking of the sound against it would not detach it from where it was imbedded? If it had been in the mucous membrane there might have been a cavity showing it; there was an appearance which gave to me the impression that that was the spot where it was attached; that spot was a discoloured spot.

1660148

Lord *Tenterden*. You said you observed a spot? I observed an appearance at that part.

What part? At the anterior part behind the pubes.

Mr. *Wakley*. Did the operator state, during the operation, he could not explain the cause of the difficulty? He said so.

He said so? He said so.

Did you suppose, then, that the operator had any knowledge of the situation of the stone? I think he had not, until he removed it: the way in which he removed it appeared at once to explain the difficulty.

Although he struck it repeatedly, he had no knowledge of the situation, you think? Not the precise situation, he could not have: it was evidently in the anterior part of the bladder, from the concavity of the staff striking it on withdrawing it from the bladder.

Lord *Tenterden*. Are the staff and sound the same instruments? The one has a groove, my Lord, and the other is without the groove.

Which has the groove? The staff.

The concavity of the staff then struck it? Yes.

Mr. *Wakley*. What is situated between the bladder and pubes? A loose cellular membrane.

Nothing else? A loose cellular tissue: what part are you alluding to now?

The anterior part?

Lord *Tenterden*. Stop! loose cellular tissue: then is loose cellular tissue and cellular membrane the same thing? Yes, all the same thing.

Then cellular membrane is what? Between the pubes and anterior part of the bladder, my Lord.

Cellular substance, cellular membrane, and cellular tissue are all the same thing? Yes.

Three names to the same thing? (*Laughter.*) Yes.

Mr. *Wakley*. All the same things: is there any thing else? The anterior part of the neck.

In fact, is there not a ligament attaching the bladder to the pubes? Yes.

When the bladder is empty, is it in a state generally, unless there be paralysis, of contraction—is it open or closed? Contracted, when there is no urine in the bladder.

When the bladder is contracted, where would you expect to find the stone? It might embrace it.

If the anterior part of the bladder, and neck of the bladder, be attached by a ligament to the pubes, and if the bladder contract, in what direction would it contract? It would contract towards the coccyx, so as to propel the stone towards the urethra.

Lord *Tenterden*. When it is full, or any portion of urine in it? When any portion of urine is in it, upon it.

What then? It contracts upon it, and would propel it towards the urethra.

Mr. *Wakley*. In point of fact, then, the bladder must contract immediately towards the pubes, and carry any thing in it which it contains towards the urethra? Yes, a regular contraction.

Has the bladder any other fixed point? Several.

Fixed? Several.

How can it contract, then? By its muscular coat.

If it be fixed? It is connected by peritoneal attachments: it has peritoneal attachments, but the bladder is not fixed.

Has it any fixed part besides to the pubes? No; it has peritoneal attachments.

Lord *Tenterden*. Then you would not call them attachments? No, no; they connect it with the surrounding parts.

Mr. *Wakley*. As the bladder, then, when emptied of its fluid, contracts immediately behind the pubes, where would you expect to find the stone? It would fall into the hollow, unless contained, as it often is, in a fold of its membrane.

Lord *Tenterden*. The stone would fall where? Into the hollow of the concavity.

Mr. *Wakley*. What extent of concavity do you suppose there is in the bladder, when emptied of its fluid? Not very considerable.

Are not the sides generally in actual contact? No, they are corrugated and contracted in the body.

Do you believe there is a space, usually, equal to three square inches? No.

You said, Mr. Callaway, you had no doubt that the forceps entered the bladder, but did they enter the bladder the first time they were tried? I think they did; I was not in a situation to see it, but I think they did.

If the bladder could not be reached by the finger, how could the finger act as a director to the gorget? I was speaking of my finger.

Your finger would not reach the bladder? No.

What do you mean by stating that the shape of the stone accounts for its not being seized by the forceps? Because a flat stone is much more difficult to get hold of than a round stone, and a small stone is much more difficult to obtain a hold of than a large one.

Do you mean that it is difficult to grasp it either by its long or its short axis? In either instance, it must be difficult.

You stated that an enlargement of the opening, required time to do it? Certainly.

How long are you cutting with a knife under such circumstances? That depends upon the extent of the opening, and the size that's required

You say it required time in making the opening to account for the delay in this case; would it take ten seconds? It might.

How many times was the cutting gorget used? It was only used once.

Are you positive it was only used once? I will not be positive, but I think so.

Did you desire the operator to explain as he proceeded? No, I did not.

Not at all? Not at all: after it was over I did.

Did he offer any explanation? I don't think he did; my attention was then directed to removing the patient from the table.

Did he speak immediately? Immediately he turned round.

How long does it take to bind a patient? Perhaps a minute; to unbind him half a minute, or perhaps a shorter time.

Then, in fact, if the operator spoke to the pupils immediately after he had removed the stone, the patient was bound while he was explaining? Unbound.

Unbinding? He was unbound, and removed from the theatre immediately.

Lord *Tenterden*. I think I collected from you that as soon as you spoke to him to explain the difficulty, you unbound the patient? He was then being unbound.

Mr. *Wakley*. He was not kept bound during any explanation? No, not a moment.

Then the unbinding and explanation were simultaneous? (Lord *Tenterden*. He did not say there was any explanation.)

Mr. *Wakley*. He said the operator spoke. (Lord *Tenterden*. He said he spoke immedia ely afterwards.)

Mr. *Wakley*. You state that you consider Mr. Bransby Cooper to be a very skilful surgeon? Yes, I do.

Have you always been of that opinion? Yes, always.

You have not, at different times, expressed a different opinion? Mr. Bransby Cooper and myself, with other surgeons, may differ on minute points of surgery, but on all points of importance, I have no hesitation in saying I should cordially agree in any opinion he gives.

Have you not stated that it was an infamous job placing Bransby Cooper over your head in the hospital? No, I have no recollection of saying so.

Will you swear to never having said so, or having used words to that effect? I believe I never could have said so; I, like all other disappointed candidates felt, I dare say, that I ought to have been elected. (*Laughter.*)

Have you not threatened, at different times, to publish documents which would expose the corrupt system of election in Guy's Hospital? No, I never have.

You never stated so to me? No, I never have.

On your oath, Sir, you state that? I am on my oath, and all I say is on my oath, and I state positively I never have said so.

Were you recently at a dinner called the Kent Medical Dinner? I often dine there.

Lord *Tenterden*. That may be, and yet not have been there recently? I was there in the course of the last two or three weeks.

Mr. *Wakley*. Now, Sir, did you not say to a gentleman at that dinner, who

was speaking to you respecting what you had formerly said of Mr. Bransby Cooper, that you never had stated he was an idiot, but that he was much better fitted to spend a large fortune than to be a member of our profession? Our friend Dr. Haslam asked me, at that dinner, whether I had ever said that I wished Mr. Bransby Cooper had a large fortune, and that he had never been a member of our profession; I told him that I had never said so; I told him I had wished very often he had had a large fortune; and I wish he had so now.

If he be so skilful a surgeon, Mr. Callaway, why should you wish he had a large fortune, and that he had not been a member of our profession? I wished he had had a large fortune, and not been a member of our profession, for then I should have succeeded.

Then, Sir, you said you thought he was better fitted—— I did not state that.

You say you did not state that he was better fitted to spend a large fortune than to be a member of our profession, but that you had wished he had had a large fortune, and had not been a surgeon? I might have said I wished he had not been a surgeon, though I don't know that I did, but I was quite on my guard.

How long did the operation last? I stated it was about fifty minutes.

Will you swear it was not an hour? No, I will not swear it was not an hour, I had not my watch in my hand; I heard from every body it was fifty minutes, and I believe it to have been that.

Did you, on any former occasion, see the cutting gorget introduced after two knives had been used? I don't know that I have.

Will you be kind enough to tell me whether there is an incision made horizontally by the gorget in that preparation? I don't know that I can distinguish between the two incisions, that which was made by the gorget, and that which was made by the knife. [*Examined the preparation.*] No, I cannot distinguish.

Lord *Tenterden*. You cannot distinguish it; what is it you cannot distinguish? Any incision made by the gorget.

Mr. *Wakley*. Is the prostate gland enlarged? It's a large prostate, but not enlarged.

How many incisions are in it? One; it has become hardened, and having been lacerated, other parts of it are much softer than they were.

Lord *Tenterden*. Is it possible, from the inspection of that, to form any judgment of it? None whatever, my Lord, not having seen it previously.

Mr. *Wakely*. After the parts were removed, did you endeavour to introduce your finger between the bladder and rectum? The whole of the cellular membrane was easily torn, as it is in those patients where the operation is fatal; it's a circumstance I have seen very, very frequently.

Was your attention distinctly directed to the state of the cellular membrane between the bladder and the rectum? It was.

What are the most likely circumstances to produce that easily lacerable state? It is, I should suppose, a sub-acute inflammatory process; I have observed it in other patients who have died after other great operations.

Would not bruises be more likely to produce that state of the cellular membrane than sub-acute inflammation? I have seen that appearance produced by the introduction of the forceps in these cases, but it has a different appearance, it is an ecchymosed appearance, that is, having blood mixed with a sero-purulent effusion; it is, in fact, the appearance of a bruise; it was not so here.

Lord *Tenterden*. In those cases, there was extravasation of blood? Yes.

Mr. *Wakley*. Would not very violent bruises prevent the small vessels of the cellular membrane from bleeding? Yes, but then there would be a bruised appearance; the vessels would contain their coagula.

What colour is cellular membrane in its healthy state? White; cream colour, rather.

What then could give it a darkened appearance if its vessels contained no red blood? The cellular membrane.

Lord *Tenterden*. Had it a darkened appearance? I have not said so, my Lord

Mr. *Wakley*. What was the state of the cellular membrane; you say it was easily lacerable? Easily lacerable; broke down easily.

But there was no appearance of blood? I saw none.

Was the cellular membrane dark or light? It was dark.

What could give it that darkened appearance, then, if its vessels contained no red blood? The sub-acute inflammatory stage to which I have alluded, parts which before did not carry blood, but in that state do carry blood, and therefore become tinged.

Now, as the cutting gorget was introduced, and as there is no incision made into the neck of the bladder by the cutting gorget, where do you suppose it went? (Lord *Tenterden.* The gentleman has not said there was no appearance of it.)

Mr. *Wakley.* That was the prostate gland? (Lord *Tenterden.* He says I cannot distinguish between them.)

Mr. *Wakley.* What instrument made those incisions which are there? Are they both oblique? They are.

There are two incisions? Yes, and made externally, are internally; the one is made upon the finger to enlarge the opening.

Lord *Tenterden.* They are both oblique? One is more transverse than the other, my Lord.

Mr. *Wakley,* Were all the first steps of the operation performed in the manner directed by Mr. Key? They were, I believe: as you are aware, standing in the position in which I did, holding the staff, I could not see the first part of the operation, but I know that was the way in which they were performed.

Does Mr. Key direct two forms of incision to be made into the bladder? No, he does not.

Is the rectum wounded, Mr. Callaway? [*Looking at the preparation for a short time.*] No, it is not.

Will you be kind enough to look at it again? With pleasure; it was not wounded when I saw it put up.

Lord *Tenterden.* Was not wounded when you saw it put up? No. [*Examined the preparation again.*] No, I see no wound in it.

Mr. *Wakley.* Did you hear Mr. Bransby Cooper state he did not believe stones were ever encysted? No, I have never heard him say so.

Did you ever hear him say they were never attached to the bladder? I don't recollect ever having heard him say any thing on that subject.

You don't recollect ever having heard him say any thing on either subject? No.

You were apprenticed to the hospital, were you not? I was.

To Sir Astley Cooper? To Sir Astley Cooper.

Re-examined by Sir James Scarlett.

Do you make any distinction between attachment and adhering? It might be slightly attached, and not adherent; there are certain asperities of stone by which they slightly adhere.

Lord *Tenterden.* To what part of the bladder? To the mucous membrane of the bladder, my Lord.

Sir *James Scarlett.* If I understand you right, the cutting gorget, if the wound was already large enough to admit the forceps, the introduction of it would not increase it? No, certainly not.

But if not large enough, would make it of the proper size? Would make it of that size.

If the wound turned out then at first to have been large enough, you would not expect to see a new incision? No.

You have been asked, from what you perceived by the concave part of the sound touching the stone on being withdrawn from the bladder, showing that it was in the anterior part of the bladder, you have been asked if the operator knew that, now you could not tell what was passing in his mind? No.

You said he asked for the bent forceps? Yes.

Did he not use the bent forceps for the purpose of trying to go up to the anterior part of the bladder for the stone? He did, and I pressed above the pubes for the purpose of assisting him.

The bent forceps did not touch it? No.

But, by-the-by, seeing the bent forceps used, though you could not tell what was in his mind, you had formed an opinion that he supposed the stone was in the

anterior part of the bladder, though the precise situation or form of it he could not determine? No.

From what you saw of the appearance of the stone after it was taken out, do you not conceive it very possible that the bent forceps must have slipped over it and never got hold of it at all? Yes.

So that finally it could only be extracted by a dexterous use of the straight forceps? And depressing the hand very much.

Lord *Tenterden.* And considerable depressing down? Considerable depressing down.

Sir *James Scarlett.* I should beg to say one word more about the gorget; supposing the finger to be upon the incision made in the prostate gland, might not he have conducted the gorget with perfect safety to enter the bladder? With perfect safety, provided the wound was large enough to admit it.

You have been asked whether it would take more than ten seconds to make a cut? Yes.

Is the simple operation of cutting what constitutes the difficulty? Oh, no.

Is that what occasions the delay? No, certainly not.

Pray, who is the gentleman, the friend of the defendant, that happened to ask you those questions you say you were asked about Mr. Bransby Cooper? (Lord *Tenterden.* Dr. Haslam, at the Kent Medical Dinner.) Dr. Haslam asked me the question.

Sir *James Scarlett.* Because you say you were upon your guard; in your judgment, from what you saw of Mr. Bransby Cooper's operation, was there any want of sufficient self-possession to know exactly what he was about, and to do all his duty? No, certainly not.

A Juror. You stated that previous to the operation you employed certain means for the purpose of ascertaining the existence of the stone; did the means you then employed enable you to ascertain the situation of the stone? Not distinctly.

Did you, previous to the operation, expect to experience any difficulty? It is always more difficult to extract the stone when it is at the anterior part of the bladder, than when it is not.

Did you expect to experience any extraordinary difficulty? No.

Are you of opinion, by the introduction of the instruments by Mr. Bransby Cooper to remove the stone, he could place it in a situation to which he could have more easy access? No.

Are you of opinion, that the nature of the operation, and consequent state of suffering of the patient, of itself would occasion death? That is doubtful; he was not a healthy man; he was a man of weak powers, and one, who, from all I saw, I should think most likely to sink under the shock of any great operation; he had that feeling himself.

Lord *Tenterden.* In your opinion, is it probable or possible that the application of the sound and the other instruments that were introduced into the bladder might bring the stone into a place where it might be more easily extracted? No, I think not.

They would not change the position of it? I think not.

Mr. Charles Aston Key sworn. Examined by Mr. Scarlett.

You are senior surgeon at Guy's Hospital? I am, Sir.

How long have you been in the profession? Since the year 1812.

Lord *Tenterden.* Since you first entered the profession? I first entered the profession then.

As a pupil? Yes.

Mr. *Scarlett.* Have you had considerable experience in operations of lithotomy? I have performed between, I think, fifty and sixty operations.

Yourself? Myself.

Have you ever seen Mr. Bransby Cooper operate? I have, Sir.

How many operations do you know of Mr. Bransby Cooper having performed? I cannot tell the exact number, but I have seen several performed by him.

Has he performed as many as twenty? Do you mean lithotomy?

Yes? I have not seen him perform twenty.

Do you believe that he has not lost more than the average number of patients? I think I can say with safety that he has not lost more than the average number.

I think you say you have witnessed many cases that he has performed? I have.

In what way was the operation performed by Mr. Bransby Cooper? I have always seen it performed exceedingly well.

You have heard the evidence of Mr. Callaway as to the manner in which this operation was performed? I have, Sir.

If it had fallen to your turn to perform this operation upon the patient, has it occurred to you there is any thing in which you could have changed the manner of the operation from that which Mr. Bransby Cooper adopted? I think from what I have heard Mr. Callaway state, that most likely I should have been inclined to have adopted the same course.

The same course? The same course, or nearly the same course.

Have you heard any thing in the evidence which induces you to think the patient lost his life by any fault on the part of Mr. Bransby Cooper? In what evidence—altogether?

Altogether; in Mr. Callaway's evidence? In Mr. Callaway's evidence, certainly not.

In your judgment, Sir, is the length of time occupied any impeachment of the skill of the operator? None whatever, Sir, it depends entirely upon the difficulties of the case.

Can any body be a competent judge of the difficulties of the operation but the operator himself? In the operation of lithotomy, no one can possibly tell the difficulties but the operator himself.

Do you happen to know of cases where it may be difficult to extract the stone, although it may be touched with the instruments? I have met, Sir, with cases of that kind myself.

You have? I have.

Do you know of any cause of the difficulty in that case? In consequence of the bladder grasping the stone; I may observe that here is a preparation on the table which I have been in the habit of exhibiting for some years past, to illustrate it, and to inform the pupils; and you may see that there the stone is held by the contraction of the bladder, and no doubt in that case it would have been exceedingly difficult to have extracted it.

Is the bladder then a muscular substance? It is, of great power.

Lord *Tenterden*. The stone was not extracted then in that case? The patient died without the operation being performed.

Mr. *Scarlett*. It has then the power of contraction? It has, Sir.

May there be a case in which the stone, though, properly speaking, encysted, or even attached to the bladder, may be so entangled in the folds of the mucous membrane, that the forceps at first won't reach it? Unquestionably—a very common cause of difficulty in the operation.

Is that as likely to take place in the case of a small stone as a large one? Equally.

In such a case, might the forceps be employed in sounding for the stone for a considerable time without effect? For a great length of time.

I apprehend they would not, in fact, touch the stone? I should imagine not, in some cases.

You were not present at this operation, I believe? I was not, Sir.

But you examined the body after death? I did.

In your judgment, Sir, from the examination post-mortem of the body, had the operation been performed scientifically or otherwise? I saw no evidence of its having been performed otherwise than scientifically.

If it had been true that any violence whatever—I don't speak of great or unnecessary violence, but rather of great gentleness—I say, if any violence had been used, probably you would have discovered the effects of it afterwards? Yes, I should think so, Sir.

For example, if the forceps had been introduced between the bladder and the rectum? I certainly should have discovered that after death.

In that case, what would have been the state of the cellular membrane? Most

likely, Sir, a passage would have been found through which the forceps had been passed, and the cellular membrane highly ecchymosed, or filled with blood.

Do you speak of extravasated blood? Extravasated blood, and likewise in a state of slough.

Did it present those appearances, Sir, or was it sound? Entirely sound; I examined the parts perfectly after they were taken from the body, and I can distinctly state that the whole of the cellular membrane on the outer side of the bladder, and between it and the rectum, was perfectly entire.

If the forceps had been admitted to be introduced into the prostate gland and bladder, with any considerable degree of force through an opening that was not sufficiently large, would the effects of it have remained? If much force had been used in pushing the forceps forward to the bladder against the prostate gland, the parts on the outside of the prostate gland would have been torn, and that must have been discovered after death.

Did they present any such appearance? They did not, Sir.

What was, in fact, the nature of the section into the prostate and bladder? It appeared to me to be a fair and free section into the neck of the bladder, and likewise through the prostate gland.

I ask for information—considering the necessity in this case of depressing the forceps which turned upon the prostate gland as a fulcrum, was it more particularly necessary or otherwise to have a free and sufficient section of the prostate gland to get into the bladder? More necessary than in a commmon case.

Is it the part, in such a case, of a cautious, careful, and skilful operator, to make sure that he has a sufficient opening there? I reckon it is the most important part of the operation.

Does it appear to you then, Sir, that in such a case the use of the cutting gorget is an instrument peculiarly applicable? It would answer the purpose equally well with a knife.

But for the purpose of ensuring a large—a sufficiently large opening? It would answer the purpose perfectly well of insuring a large opening.

Is it the property of the cutting gorget to make an opening equal in breadth only to the extent of itself? That is the advantage of the cutting gorget.

I apprehend it must be of that breadth exactly? It can neither cut more nor less.

Does it often happen, Sir, that in cases of this nature you cannot reach the bladder with your finger through the perineal wound? My experience proves to me that in very few cases in the adult you can reach the bladder with your finger; that can only be done in children, or in very spare persons.

I apprehend it is desirable to do so if possible? Most undoubtedly, Sir.

And an operator is justified in making use of some endeavour to do so? Certainly.

Does it usually happen that you reach the prostate gland? I have never met with a case in which I could not reach the prostate gland.

The prostate gland, I believe, is a gristly substance? A hard substance.

Into which you introduce the finger in cases of this nature? I do.

The finger then acts the part of a staff or sound in it? It acts the part of a director, and is the best director a man can use in the operation—I mean for the forceps.

Did you examine the state of the perineum after the death of the patient particularly? I had no opportunity of doing so; the parts were taken from the body before I saw them.

Then whether they were deep or not, you could not tell? No.

Had you any conversation with Mr. Lambert on this subject? I had, Sir.

Be so good as to state what passed? On the day of the inspection of the body, Mr. Lambert met me in the square of the hospital while I was talking to four or five pupils, and he said to me—Sir, your straight staff will never answer in a deep perineum; I answered him, knowing that a deep perineum had nothing to do with a straight staff—that a straight staff would answer as well in a deep, as in a shallow perineum—Sir, you know nothing about it, having never performed the operation yourself.

Lord *Tenterden*. Did you tell him that in this case the perineum was not a deep perineum? I continued to say—besides, Sir, if you call this a deep perineum, I can only tell you that I have operated in a case twice as deep, alluding to a case

I had operated upon about two months before; but making no observation upon this case whatever: having never seen the perineum during life, not having seen it after death, and not having seen the parts until after they were removed from the body, I could give no opinion, and could form no judgment on the depth of the perineum.

Mr. *Scarlett.* In what space of time have you seen Mr. Bransby Cooper operate for the stone; what was the length of time? Certainly not more than the average time; one minute and a half, two minutes or three minutes, according to the difficulties of the case.

Is that rather below the average than above? I should say, Sir, that's about the average.

In cases of an ordinary kind? Yes.

Did you ever tie the subclavian artery, Sir? Did I ever tie it, Sir?

Yes? I have twice.

Is it a common and easy, or is it an uncommon and difficult operation? I conceive, Sir, that where it is tied for aneurism—for disease, it is by far the most difficult operation in surgery that I have ever performed: I was going to observe, Sir, that I say for disease, because where the parts are sound, as in the dead subject, the operation is easy enough; there is a great difference between a sound and an unsound limb where this artery is tied.

Could such an operation be performed by any except by a surgeon of considerable practice, experience, and skill, and a good anatomist? I consider that it requires a very good knowledge of anatomy, great skill, and great presence of mind.

Do you know of Mr. Bransby Cooper having performed this operation? I do, Sir; I assisted him in doing it, that is to say, so far as holding the parts back.

Lord *Tenterden.* Did he do it well? I never saw an operation better performed in my life.

Mr. *Scarlett.* Was it for aneurism? For aneurism.

Do you recollect how many minutes he took to perform it in? (Lord *Tenterden.* It does not signify so much about time—he says he never saw an operation better performed in his life.)

Mr. *Scarlett.* What is your judgment on Mr. Bransby Cooper's qualifications with regard to his presence of mind and self-possession? I never recollect having seen him lose his presence of mind on any occasion.

Have you seen him perform a great many operations? I have, Sir.

Of all kinds? Of all kinds.

I need hardly ask you, then, what your general opinion is of his skill? I consider him, Sir, to be a good surgeon.

Cross-examined by Mr. Wakley.

Did you see any report of tying the subclavian artery by Mr. Bransby Cooper in "The Lancet," Mr. Key? I did, Sir.

How was Mr. Bransby Cooper spoken of in that report Sir? (Lord *Tenterden.* We must have the report if you go into that. Sir *James Scarlett.* My Lord, I won't put the gentleman to the trouble; there was before this quarrel with Lambert a very handsome report of this gentleman's operation in that case in "The Lancet." Lord *Tenterden.* What's the date of it? Mr. *Wakley.* I have not the volume here. Do you recollect the date, Mr. Key? *Witness.* I don't recollect it.)

Mr. *Wakley.* Do you recollect whether that report was published before or subsequently to the dinner at which there was a quarrel between Mr. Bransby Cooper and Mr. Lambert? Certainly subsequent to the dinner two years ago.

You have stated, Mr. Key, that the gorget is the best instrument for making an opening into the bladder? I have not stated that, Sir; I said in the way in which it was used by Mr. Cooper, it was as good as a knife.

Did you see Mr. Cooper use it? I did not.

How do you know how it was used then? (Lord *Tenterden.* He states it from Mr. Callaway's evidence.)

Mr. *Wakley.* Are you the author of a Treatise—you have published a book on lithotomy? Yes.

Is this it [*Showing a book*]? Yes.

It is called, I believe, "A short Treatise on the Section of the Prostate Gland in Lithotomy:" do you recollect this passage in your treatise, "To the gorget exclusively belongs the merit of first employing the staff, in the modern light of a director; is it surprising that the blind should err in a crooked path?" I can explain that.

Lord *Tenterden.* It does not bear on this case. *Witness.* Yes, it bears on this case: Mr. Bransby Cooper did not use the gorget first. I object to the use of the gorget before an opening is made into the bladder, but where there is an opening made into the bladder, there it may be used.

Mr. *Wakley.* Then an opening having been made in the proper direction, that is, obliquely towards the tuberosity of the ischium, would a gorget, passed horizontally, pass in the course of that incision? Certainly not, and I never saw an incision that did.

Lord *Tenterden.* If this is material I have not got it.

Mr. *Wakley.* Yes, my Lord, it's very material: my question is, if the incision was properly made, as directed by Mr. Key in his book, through the prostate and neck of the bladder, would not the gorget, if introduced horizontally, intersect the first? If the incision had been properly made you say——

Made according to the direction you have given in your work? Certainly, if the first had been made obliquely through the prostate gland, a gorget carried horizontally, would not have gone in the same track exactly; that's quite clear.

You have operated in about fifty or sixty cases; how many patients have you lost? I have only kept an account of those I have performed in Guy's Hospital: I have performed forty there, and lost three; but then I should say, in justice to Mr. Bransby Cooper, that the major part of those were young persons.

On how many occasions has Mr. Bransby Cooper performed the operation? I cannot say, Sir, but it may be from twelve to fifteen times, it may be more, may be less.

How many of his patients died? I really, Sir, don't keep an account of Mr. Bransby Cooper's cases.

You stated he had not lost more than the usual number? If there had been an unusual mortality, I should have been informed certainly, inasmuch as he employs the same instruments as I do.

How many do you use? I believe I use a knife and a staff, and either of the forceps, and if I want more in difficult cases, I should use the straight forceps, crooked forceps, scoop, or any instrument, with which I thought I could succeed in extracting the stone.

In what cases have you employed more than three instruments, Sir? In what cases, Sir—I don't know that I have employed in Guy's often more than three, but I have in private practice: I don't doubt that Mr. Laundy who is here, will tell you he has often handed to me more than three instruments.

Did you ever employ the scoop if the stone was not broken? I have.

On what occasion? On the occasion of a round stone which I could not grasp with my forceps, I therefore used my scoop to throw it to the neck of the bladder, in which I succeeded.

You stated that the bladder was as likely to grasp a small as a large stone—do, you consider that the sides of the bladder are in actual contact after the urine is evacuated? It depends upon whether the bladder is contracted or collapsed; if the bladder is contracted, I apprehend the sides of it are in contact; if it collapses, it may then not be so perfectly in contact.

You stated just now, Mr. Lambert knew nothing of the operation of lithotomy, because he had never performed it. (Lord *Tenterden.* Not that he knew nothing of lithotomy, but that he knew nothing of the use of the straight staff.)

Mr. *Wakley.* How many times had you performed lithotomy before you wrote this work? I think I performed three operations before that was published; I had satisfied my mind as to the principles, therefore I published, and subsequent experience has shown me that I was right.

Lord *Tenterden.* This is a very minute examination.

Mr. *Wakley.* Yes, my Lord, and there has been a very severe attack made on Mr. Lambert. You say you had performed three operations before the work was *published.* Now how many had you performed before it was *written*? you say in your work, "I had for a considerable time past been in the habit of operating on

the dead subject with the instruments I have described, but until very lately, I had no opportunity of trying them on the living subject; to Sir Astley Cooper's kindness I am indebted for the opportunity, who allowed me to operate on a boy who had been sent from the country into Guy's Hospital, for the purpose of submitting to the operation."—Will you explain that? Explain it yourself.

Lord *Tenterden*. It has nothing to do with this case. (Mr. *Wakley*. It is part of the system in Guy's. Lord *Tenterden*. No, no, the system; we have nothing to do with system—we are here upon this case Mr. *Wakley*. Well, my Lord, it's merely a ramification. Lord *Tenterden*. No, no; but I must confine this case to the case itself. Mr. *Wakley*. Very well, I shall not press it.)

You stated that you were not aware of the exact depth of the perineum? Yes.

How then could you state you had operated on a perineum twice as deep? I could.

Lord *Tenterden*. How? the gentleman asks? Because it stands to reason, that a man with an enlarged prostate gland, and weighing sixteen or seventeen stone, must have a much deeper perineum than the common or little man, on whom Mr. Bransby Cooper performed the operation; the perineum in that case was so deep, that I could scarcely reach the stone with the long forceps I had.

Mr. *Wakley*. You stated the operation of tying the subclavian artery, to be the most difficult operation you have performed? I do.

Was the operation of tying the subclavian artery in Mr. Bransby Cooper's case successful? No, certainly the man did not ultimately recover, but I believe he died of the disease more than he did of the operation.

Did not the man die of hæmorrhage of the part where the vessel was tied? No, in consequence of the suppuration of the sac below the ligature.

Below the ligature? Below the situation of the ligature.

Was not the aneurism in the axilla? where was it? It was in the axilla.

Was the vessel tied above or below the clavicle? Above, Sir.

What circumstances rendered the operation a difficult one in that situation? The elevation of the clavicle by the aneurismal sac.

Are there not surgeons in London, at the present time, who have performed that operation, and who have no reputation as operative surgeons? There is no surgeon in London who has performed that operation as well as Mr. Bransby Cooper did on that occasion.

Lord *Tenterden*. That is as far as your experience goes. (*Witness*. I think I may say so, without any qualification at all.

Mr. *Wakley*. Did you witness all the other operations? I witnessed one or two by Mr. Travers, one or two by Mr Green, and I have heard of one by Mr. Brodie, and I have performed the operation myself, and I never in those which I have seen or heard of, saw the operation performed better or so well as in that case of Mr. Bransby Cooper's.

It has been performed also by Sir William Blizzard? I think not, Sir.

Yes, it has, and by Mr. Wardrop? What for?

Aneurism of the innominata: do you consider, Mr. Key, that Mr. Bransby Cooper is a scientific surgeon? I do: a man cannot be a good surgeon without being scientific.

How do you define science as applied to a surgeon? (Lord *Tenterden*. Why do you ask that question?)

Mr. *Wakley*. I should like to know what he means by it? If a man has good reasons for what he does, I conceive he will be a scientific surgeon.

Did you have any conversation with the plaintiff respecting this operation of lithotomy, before the report was published? I never, Sir, saw the patient, never heard of him being about to be operated upon, and was not present at the operation.

Lord *Tenterden*. The question was, whether you had had any conversation with Mr Bransby Cooper respecting this operation?

Mr. *Wakley*. Yes, my Lord, before the report appeared in "The Lancet?" I do not recollect having had any conversation at all with Mr. Bransby Cooper on the subject.

Are you certain you had no conversation with him on the subject before the

report appeared? I am certain I had no conversation with him before the report appeared upon the operation of lithotomy.

Have you had any conversation with the plaintiff upon the subject since the report appeared? I have had very little conversation with him on the subject since, and really, the points on which he touched I cannot recollect—they were of no importance—he never explained to me the difficulties he met with, nor the reasons.

As it was a difficult operation, and as you have so high an opinion of Mr. Bransby Cooper's skill, were you not anxious for any explanation from him in this case? It appears by my not asking him that I had not any anxiety on the subject.

Did he not state to you that he had had a troublesome one? I don't think I ever saw him between the operation and the report.

But I am speaking of a time subsequent to that? No, he did not, and I can give you a reason, because I heard he was about to bring it into a court of justice, and I did not like to give any evidence upon hearsay report.

Mr. Key, as the contributors to "The Lancet," have been so highly complimented, have you ever contributed to it? On one occasion I sent, or rather brought to you a communication for it, and I will explain to you the reason: During the difference at Guy's, a memorial was presented to the governors, and in answer to that, Mr. Green sent in a reply; that reply appeared in your "Lancet," and on that account, Sir, I called and desired you would put in a rejoinder as well; you may recollect on what occasion I called; that is the only time on which I ever had any communication with "The Lancet" as a contributor.

Do you recollect subsequent to that? I say to the best of my recollection.

Do you recollect an article, which you stated was very well written, which you considered was a very clear exculpation of Mr. Bransby Cooper's character? I don't recollect what you stated.

Respecting the Museum; do you not recollect an article which you stated was very well written? a leading article? I may have expressed my opinion favourable to that article.

Was it not an article strongly favourable to Mr. Bransby Cooper's character? To the best of my recollection it was.

You did not witness the operation by Mr. Bransby Cooper? No.

You are a nephew of Sir Astley Cooper? I married his niece.

Re-examined by Sir James Scarlett.

Well, did he do justice to his character as a surgeon? I believe, Sir, it was more in allusion to his having been a teacher of anatomy at St. Thomas's Hospital.

Well, did he impeach then his skill? No, not at all.

Mr. Joseph Laundy sworn. Examined by Sir James Scarlett.

Have you been in the habit of attending operations long at Guy's Hospital? I have been in the habit of attending operations for 30 years.

Then you have seen many operations for the stone by different surgeons? I have seen a good many operations for the stone by different surgeons.

How many? I have seen some hundreds of operations for the stone by Sir Astley Cooper, by Mr. Cline, and by others.

You were present at the operation in question by Mr. Bransby Cooper? I was.

Do you recollect all the instruments you handed to him on the occasion? Probably not.

Was there any thing peculiar in this operation? I never profess to be a judge of an operation.

But you have handed a good many instruments to different persons in the course of your time? I have.

Have you witnessed operations that have continued as long a time as this did? I have.

Lord *Tenterden*. Of lithotomy? Lithotomy.

Sir *James Scarlett*. By what surgeons? By Mr. Cline, by Mr. Green, by Mr. Cline, senior.

How long have you known Mr. Cline? how long have you known an operation last under his hands? The most tedious operation I ever was present at was by Mr. Cline, senior.

What time did it last? It was stated by many students, then, that it occupied two hours, but I believe it was an hour and 40 minutes.

Did Mr. Cline extract the stone? He did.

Have you known other instances of operations lasting an hour? I think I have.

How long have you known Sir Astley, though he is here, we may as well have it from you? He has known me from his youth.

But I ask you how long you have known an operation of his to last? I believe above an hour.

Was that at the hospital? At the hospital.

Now you are not sure that you can remember the instruments, in their order, that were used? No.

You first remember the knife, I take for granted? No; the first thing I gave was Mr. Key's staff.

What was the second? The second was Mr. Key's knife.

What was the third? The third that was called for, was Sir Astley Cooper's knife.

Now, recollect, were not the forceps used next? Oh, the forceps.

The straight forceps? Yes.

Then he called for Sir Astley Cooper's knife? Yes.

Well, after he had used that knife, did he use the forceps again? They were still retained then.

Well, do you remember the bent forceps being used? They were handed forward.

Well then, was the sound, the staff, put into the wound? I did not see the operation.

Then you did not hand a fresh staff? I handed it over.

That's for a sound? Yes.

Well, did you hand a gorget? I did.

What gorget was it? It was the cutting gorget.

Was there any but that? There was no other gorget then but that I delivered.

Was there any other instrument there but what you knew of, that you were to deliver; you delivered none but the cutting gorget? I delivered none but the cutting gorget at that time.

At that operation? No, I mean after Sir Astley's knife, then I handed the cutting gorget?

Did you, at any time, hand the blunt gorget? The blunt gorget was handed over because some person called for it.

Was it Mr. Bransby Cooper that called for it? I believe not.

Then this somebody called for it, and though it was not Mr. Bransby Cooper, can you tell whether he used it or not? I cannot tell.

Cross-examined by Mr. Wakley.

Were you there during the whole of the operation? I was not.

Oh, you were not? I was called out for a few minutes.

In those cases that lasted for so long a period, were you aware of the reason of the delay that took place? No, I cannot speak professionally.

You are not a surgeon? No, I am only a surgical instrument maker.

Dr. Hodgkin affirmed. Examined by Sir James Scarlett.

Dr. Hodgkin, I believe you are in the office of Professor of Morbid Anatomy at Guy's Hospital? I have recently had the honour conferred upon me of performing that duty.

Did it fall to you, then, to examine this body? It did.

Did you make any examination of the parts in the body before the parts were separated? I do not recollect that I did; I saw that it was the body of a stout made man.

Did you look to the depth of the perineum? I do not recollect that I did.

He was a stout man? Quite so.

Was he that sort of subject in which the perineum was likely to be deep? It might be rather so, at least a full size.

Now, when the parts were separated, did you examine them so as to be able to ascertain their state and condition? I examined the parts after their removal, and not the interior of the pelvis before their removal.

Could you see, from the appearances, whether there was any wound or bruise in any of the parts, excepting that of the prostate gland and bladder? There was a wound from the external surface into the bladder, and I was aware of no other.

Was there any appearance of a wound or bruise between the bladder and rectum? None.

In what state were the kidneys? The kidneys were mottled by a white deposit, which is not very unfrequent in subjects of that kind.

Subjects affected with the stone? With or without the stone such kidneys are not very unfrequent.

If there had been any wound or bruise made within eight-and-forty hours of the man's death, between the rectum and the bladder, must that have exhibited appearances by which you would have detected it? I think I should certainly have seen it.

And you saw none such? I saw none.

Did it appear to you that either the knife or forceps had passed any where but from the wound into the bladder? I cannot say that it did.

You saw no appearance of their having done so? I saw nothing that induced me to suppose that had been the case.

Do you recollect when you had these parts, and had shown them, when you had turned your back hearing an expression from a Mr. Lambert that was there? After I had removed the parts, I was necessarily occupied for an hour another way; in that time they were seen by James Aston Key, James Lambert then saw them; they were then taken down by myself or one of my assistants, and he saw them first in my presence; I afterwards left the apartment in which the preparation was, to wash my hands, and was informed by James Lambert that he had found a passage between the bladder and rectum; he showed me the passage, and it struck me, as I had not seen it before, that it must have been made by him. I cannot say that I saw him make it, and never have said he had.

What did you say to him on that occasion? I taxed him with having done so.

Now, do you feel satisfied, Dr. Hodgkin, that there was no such passage before he had it in his hand from your previous examination? I am confident I had not seen it before.

But if it had been there, are you confident you would have seen it? I can hardly conceive it would have escaped my observation: I removed the parts, and meant to examine them more minutely afterwards, and they were put away on my being engaged.

He had his finger in the passage when he called your attention to it? He had.

Well, supposing that passage had existed in the lifetime of the patient, and been done by force, in your opinion would it have contained extravasated blood? It would have contained coagula, in my opinion.

Well, then, judging from your science and knowledge, is it your belief that that was made after death? It is my firm conviction that it was made after death.

How long have you been in your present situation in the hospital—how many years? Very nearly three.

Did you know Mr. Bransby Cooper before? I was pupil at the hospital during his apprenticeship.

Are you competent to form a judgment of Mr. Bransby Cooper's knowledge and skill as a surgeon? I suppose that I am competent to form an opinion.

Well, what is your opinion? I apprehend him to be a very fair surgeon.

A good anatomist? Decidedly a good anatomist.

Cross-examined by Mr. Wakley.

Are there not many good anatomists who are very wretched surgeons, Dr. Hodgkin? I do not know of any one who is, but I can conceive it possible to be so.

Do you not know that there are persons in this town who are celebrated for their knowledge of anatomy, but that it 's quite ludicrous to speak of their surgery? I do not know to whom such allusion is made.

Have you read the report in "The Lancet" of the post-mortem examination of Stephen Pollard's body? If I have not read it I have heard it read.

Have you not read it? I am not sure that I have.

Will you be kind enough to read it—(*handing the report*)? I have heard it read.

Was there any inaccurate statement in it? There was an inaccurate statement respecting the third lobe: it 's stated there what I believed at the time, but which, subsequent examination proved not to be the case.

Is not that report taken from your own words? I believe it is; it is stated so in my notes.

Does it state that there was an opening found between the bladder and rectum? Not in my notes.

But is it so in the report in "The Lancet?" (Lord *Tenterden*. That will speak for itself.) Mr. *Wakley*. "The cellular tissue throughout the pelvis, was easily lacerable, and this was more especially the case with the portion between the bladder and the rectum, admitting of the passage of the finger with great facility, and to a considerable distance?" That is not the case.

Well, what was the case? The cellular membrane generally was easily lacerable, but not particularly so between the bladder and the rectum.

Did you try to force your fingers there, before you exhibited the preparation to Mr. Lambert? I have not.

Did you not? I DO NOT RECOLLECT THAT I DID!!

Did you examine it particularly? I examined it.

Are you certain that opening did not exist, at the time you showed the parts to Mr. Lambert? I have stated I DID NOT SEE IT, until he showed it to me.

Should you understand the passage I have read to imply a wound? I should.

"Was easily lacerable;" should you not consider that as implying some resistance? I understood, from the reading of the report to me, that there was a wound, which I do not believe existed.

Have you seen much of Mr. Lambert's conduct at the hospital? I saw him there repeatedly.

Did you ever see any thing ungentlemanly or mean in his conduct? I never was intimate with him.

Do you know of any thing that is derogatory to his character? I cannot say that I have ever seen any thing of the kind myself.

Re-examined by Sir James Scarlett.

You have very little personal knowledge of him? Very little.

You have not been an eye-witness to any of his excesses, I dare say? No.

You have only known him from being connected with "The Lancet?" I knew him by sight long before I knew he was so connected.

Mr. Benjamin Brodie sworn. Examined by Mr. Pollock.

You are a surgeon, and a member of the College Council? I am, Sir.

How long have you been a surgeon? I have been a member of the College since the year 1805.

Are you acquainted with the plaintiff, Mr. Bransby Cooper? Yes, I am.

Have you seen any of his practice? I have seen none of his hospital practice: I have met him occasionally in private practice.

Have you seen enough to enable you to form an opinion of his merits as a surgeon? I have conversed with him several times on surgical subjects; and from those conversations, and from what I have seen of his practice, I should believe him to be a very intelligent surgeon.

You have heard Mr. Callaway's account of the operation? Yes, I have.

Does that appear to you to have been an operation of facility or difficulty? An operation of considerable difficulty.

Exercising your judgment on the account given by Mr. Callaway, does Mr. Bransby Cooper appear to you to have conducted the operation in a skilful manner, or otherwise? I should believe in a skilful manner.

Have you frequently performed the operation of lithotomy? A great number of times.

Does the operation vary much, in point of circumstances and difficulty, in one case from another? I think very much; indeed more than any other case in surgery.

Does the length of the operation, or the application of a variety of instruments, indicate to a person of eminence, with respect to this operation—is it any criterion of the abilities of a surgeon? No; I should say that it indicates the difficulty of the operation.

To what hospital do you belong? St. George's.

You are not of Guy's? No.

Cross-examined by Mr. Wakley.

What operations have you seen Mr. Bransby Cooper perform? I have never seen him perform any operation.

Not any? No.

Do you recollect, Mr. Brodie, attending a meeting at the Freemasons' Tavern, in the month of December, 1825, with Mr. Travers, and Mr. Green, and Mr. Stanley? I suppose I recollect the meeting to which you allude—I suppose I do.

Lord *Tenterden*. But do you recollect; did you attend a meeting with Mr. Travers and Mr. Green? I recollect attending several meetings, and I suppose the one he alludes to.

Mr. *Wakley*. What was the object of the first meeting which you attended there when Mr. Abernethy was in the chair?

Sir *James Scarlett*. My Lord, I must object to this.

Lord *Tenterden*. At present I cannot apply it; but I cannot stop it yet.

Mr. *Wakley*. My Lord, the object will very soon be perceived.

Witness. The only meeting to which I can conceive your question applies, was when the publication of lectures began in "The Lancet," and when the lecturers felt themselves aggrieved, and met for the purpose of considering how the publication of them could be put an end to. I am not aware that Mr. Travers was at the meeting: I believe he was not.

Mr. *Wakley*. Did you not, at that meeting, enter into an engagement to pay the expenses, if Mr. Abernethy would move for an injunction against my work? It was considered as a common cause, and either there or elsewhere there was some engagement of that kind entered into, it being considered it was a question that related to every one of the lecturers.

Did you pay any portion of the expenses incurred by Mr. ABERNETHY in moving for the injunction obtained in the Court of Chancery against "The Lancet?" YES, I DID, ON THE SECOND APPLICATION FOR AN INJUNCTION; not the first.

Are you not, at this time, contributing pecuniary means towards the support of a journal in opposition to me? No, I am not: when the journal was instituted, I did contribute, with some others, to enable the editor to set it on foot: I know nothing of it since.

Re-examined by Mr. Pollock.

Who were the lecturers present at that meeting, Mr. Brodie? Mr. Abernethy, Mr. Stanley, Dr. Blundell I believe, Mr. Green, and some others: Mr. Bell I shall not be quite certain of.

Well, I ask you, did it appear to you to be a grievance to have your lectures published as they had been? A very great grievance, because they were published—not only taken from us, but published in an incorrect manner, and therefore did us discredit—did those discredit who had delivered them.

You made common cause to put down what you conceived to be a grievance? Yes, I did.

Mr. *Wakley*. Did not Mr. Abernethy make an *affidavit* of the accuracy with which *his* lectures were taken?

Lord *Tenterden*. No, no; the affidavit will speak for itself.

Mr. *Wakley*. Very well, that's enough.

Mr. Benjamin Travers sworn. Examined by Mr. Scarlett.

How long have you been in the profession, Mr. Travers? Since the year 1800.

Lord *Tenterden*. Since you practised? I commenced in 1808, as a surgeon.

Mr. *Scarlett*. How long, Sir, have you practised as a surgeon? Twenty years.

Are you a member of Guy's, or of St. Thomas's Hospital? St. Thomas's.

Have you heard the evidence given by Mr. Callaway and Mr. Key? I have.

Respecting Mr. Bransby Cooper and the operation in question? I have.

Lord Tenterden. He was not present at the operation?

Mr. *Scarlett.* No, my Lord; but Mr. Key has stated some general facts, and he was present at the post-mortem examination. Taking the evidence for granted, what is your opinion regarding the skill with which this operation was conducted? I have not heard any circumstance which would, in my mind, tend to impeach the skill of the operator,

Do you agree with Mr. Key, that the operator is the best judge of what instruments to use? Decidedly so.

Do you agree that the length of time occupied during the operation is not alone a criterion of the surgeon's skill? Certainly.

Are you acquainted with Mr. Bransby Cooper? I am.

What is your opinion of him as a surgeon? I consider Mr. Bransby Cooper, whom I have had the pleasure of knowing for many years, since he entered the profession as an apprentice, as an ingenious and an intelligent surgeon.

Do you, then, consider him fit for the situation he holds of surgeon at Guy's Hospital? I do.

I would ask you if difficulties occur sometimes in the operation for stone, which befal the most skilful operator? Undoubtedly.

I will ask you whether you consider this operation to have been one of that number? I do.

You heard it stated yesterday, that the distance between the tuberosity of the os ichium and the prostate gland was two inches and a half—what is your opinion upon that subject? I should imagine it would vary, according to the size of the trunk.

Speaking generally? Speaking generally, that it would be more rather than less.

What should you average it at? Three inches, perhaps.

Half an inch would make the difference, whether you reached the bladder, or not? It would make a considerable difference in the case of the prostate.

Lord *Tenterden.* What part is that? The prostate gland is of a heart shape; the base is placed most posterior, it invests the neck of the bladder.

Mr. *Scarlett.* If any force had been used in the introduction of the forceps, so as to have been injurious, would it have been obvious on the post-mortem examination? Any considerable degree of violence, it would.

Would the cellular membrane have been lacerated? Probably; provided the prostate had been freely divided: I apprehend there would be some sign of any extraordinary violence that had been used by the forceps, if there had been any.

Had you any consultation at St. Thomas's Hospital, upon the subject of "The Lancet?" Yes, we had.

Was there a meeting upon that subject? The surgeons met together to consult about it.

Lord *Tenterden.* I don't understand what is the material drift of this, but go on.

Mr. *Scarlett.* Were you present at any difference between Mr. Bransby Cooper and Mr. Lambert? No, I was not.

Have you read the statement in "The Lancet?" I have.

Is it such as a professional man would publish? Certainly not.

Do you consider it to be a true, fair, correct, and professional account of what took place? I do not.

Cross-examined by Mr. Wakley.

Was the plaintiff present on the occasion to which you refer? I do not remember that he was; it was a meeting of the surgeons of St. Thomas's Hospital.

You say that you consider this was not a fair account of what passed at the operation: did you witness the operation? No, I did not.

Nor the post-mortem examination? No, I did not.

Nor any part of either? Nor any part of either; I judge only from the evidence that has transpired in court.

Have you performed the operation repeatedly yourself? I have.

Have you met with many difficult cases? I have.

Did you use all the instruments in those cases, that were mentioned to have been used in this? In some cases I have called for different instruments; a scoop, or different instruments, according as I required them.

Have you operated in cases where there has been no stone? I have.

How many? In two cases where it was not found; but in one of those I am as convinced as I was before the operation, that there was stone; and it was remarked by several surgeons—four or six, some of my own acquaintances, who examined the patients both before and after the operation—that there was stone; but Mr. Cheselden performed the same operation, I believe three times, with the same want of success, and certainly he was the most fortunate lithotomist this country ever produced. In a third operation, a small stone escaped; I had it analysed, and which was found, by Dr. Prout, to consist of the lightest of human calculi, and which might escape with the gush of urine.

In one of those cases, did a fistulous opening remain from the bladder to the rectum? I believe it did, I am not quite sure.

What operations have you seen Mr. Bransby Cooper perform? Three or four.

In Guy's? In Guy's, and one in private: I have seen him operate for subclavian aneurism, and exceedingly well.

Re-examined by Sir James Scarlett.

Has he done that as a surgeon of competent skill would do it? Perfectly so.

Do you agree that that is one of the most difficult and scientific operations? Undoubtedly.

You differ in opinion, then, with the gentleman from Beaminster? Oh, certainly.

You have performed many operations of all sorts? I have.

Does a surgeon ever perform the operation of lithotomy until some other surgeon as well as himself has sounded and discovered the stone? Never.

In the cases the gentleman has alluded to, was that precaution taken? Decidedly it was.

So that it was not your opinion only that stone existed, but that of others? Of several others, who did not doubt it.

Probably you have been longer performing some operations? I have, undoubtedly.

Do you conceive any body can judge of the propriety of the length of time occupied but the operator himself? I think not.

Could you venture to give an opinion upon the science of another man in a case, without consulting him upon the difficulties? Certainly not.

Now the defendant has asked you whether you saw this operation of which this is a report, but which is not a fair statement;—suppose you had not heard a word about it, should you conceive that the report had been written by any surgeon? I should blush for any professional man who had made such a statement.

Lord *Tenterden.* You think that dividing it into acts, like a tragedy, is not becoming—that this should be the form in which a surgical report should be made? I am afraid I must not designate it by the terms I think applicable to it.

Mr. Joseph Green sworn. Examined by Sir James Scarlett.

I believe you are one of the surgeons of St. Thomas's Hospital? I am, Sir.

Have you been so for some years? Between seven and eight years.

I believe that you are the nephew of the late Mr. Cline? I am, Sir.

That, I believe, is not yet declared to be criminal, and therefore I am not afraid of asking the question: have you performed many operations for the stone? Yes, Sir; I believe I have performed it many times.

I believe I may say you have been very fortunate? I believe I have been.

Your cases have generally been successful? Yes, Sir.

Have you known Mr. Bransby Cooper long? Yes, Sir; for many years.

Have you known operations performed by him? Why, Sir, I have not been witness, to the best of my recollection, to more than one capital operation performed by him; it was that of tying the external iliac artery,—the same kind of operation as that of putting a ligature on the subclavian artery; and, I must say, that that operation was admirably performed.

Lord *Tenterden.* Putting a ligature on what? The external iliac artery—the artery at the groin—the main trunk that supplies the lower limb.

Sir *James Scarlett.* And you conceive that to be like the tying up of the subclavian artery; one of the most difficult operations in surgery? Yes, Sir.

Now, from that circumstance, and from your general knowledge of Mr. Bransby Cooper, what is your opinion as to his science, reputation and skill, and fitness to be put into the situation of surgeon for that hospital? I consider him as perfectly competent for the duties of that situation.

You have heard Mr. Callaway's account of the operation itself? I have paid strict attention to it.

I beg to ask whether, from that account, you, as a man of science, you would draw any inference whatever to the prejudice of the operator's skill? None.

From the situation of the stone that has been described, would you conceive it necessarily to have been an operation of difficulty? I do; I consider it was a case of difficulty.

Supposing the stone to have been situated as the witnesses have described it to have been, that is, the first witness yesterday, and Mr. Callaway to-day, in your judgment, were the instruments employed such as a skilful operator might find necessary to employ? Yes.

Does the length of time occupied in an operation present any objection to the operator's skill? I consider none, of itself.

From what you have heard of the statement made by the assistant surgeon, do you conceive that the most skilful of operators might probably have occupied the same time, and the result have been equally fatal? Yes, I do, Sir.

Cross-examined by Mr. Wakley.

What is there to render difficult the tying of the external iliac artery, Mr. Green? It is an artery of great importance; there are parts around it which it is necessary to avoid injuring, and it is necessary, therefore, to have a considerable anatomical knowledge to perform the operation; it is one which requires that, not only with respect to the artery itself, but other parts.

How high was the vessel tied above Poupart's ligament? I don't exactly recollect, but to the best of my knowledge there was nothing unusual in the case.

What other operations have you seen him perform? I have said I do not recollect any other capital operations.

You attended at the meeting at the Freemasons' Tavern? At the meeting alluded to by Mr. Brodie.

Had any of your lectures been then published? Yes.

At that time? Yes.

What were they? Some lectures I gave on the eye in the course of Sir Astley Cooper.

Did you contribute towards paying the expenses of Mr. Abernethy's injunction? I did.

The second application? That I don't recollect: I suppose it was, from what Mr. Brodie has said, but I have no recollection of whether it was or not.

Re-examined by Sir James Scarlett.

Were your lectures published faithfully? No.

Were they published so as to give to you, the composer of them, credit? On the contrary; the opinions I delivered at St. Thomas's Hospital were grossly perverted.

Mr. *Wakley.* Was not one of them published accurately? I think the first was tolerably accurate.

Dr. Babington sworn. Examined by Mr. Pollock.

You are now, Sir, a physician in the city of London, I believe? Yes.

Were you formerly a surgeon? Yes, Sir.

At what hospital? At Guy's Hospital.

Do you know Mr. Bransby Cooper, the plaintiff? Yes, Sir.

Have you had any opportunity of knowing his skill and competency, and knowledge, as a surgeon? I have had constant opportunity of knowing by my attendance at the establishment, and the perpetual communication I had with the gentlemen who were under education there; but it did not form any part of my duty to attend to the operations at the hospital, and it is therefore that I don't recollect

seeing any operations of his, but the general course of his education I am well acquainted with.

Do you know him personally? Oh, personally, for many years.

Have you had communications with him upon medical and anatomical subjects? Many.

Lord *Tenterden.* Conversations, I suppose? Yes, and more than that, for when my son, Dr. Benjamin Babington, was preparing himself for the situation he now holds, he was, at that time, a student at Guy's; on that occasion, Mr. Bransby Cooper had the politeness to show him marked attention by not only giving him up his time at the hospital, but by coming to him to my house, and I had full opportunities on those occasions of being satisfied of his anatomical knowledge.

Mr. *Pollock.* In your opinion, Sir, is he fit to fill the situation he does as surgeon at Guy's Hospital? Sir, as the best conviction of my mind on that point, I have placed my own son under his care as an apprentice, which he now is.

Lord *Tenterden.* Then you have more sons than one? Two, Sir—a younger son with him now; and I must take this occasion to add, from my long and intimate acquaintance with the Borough Hospitals, and knowing well the surgeons of both, I considered myself quite free to make the application to either of the gentlemen to have my son placed either under the one or the other; my son has been placed under Mr. Bransby Cooper, and I remain, to this moment, perfectly satisfied with the arrangement I made.

Cross-examined by Mr. Wakley.

Did or does your son reside in the house with Mr. Bransby Cooper, Dr. Babington? Never.

Have not all the apprentices of the hospital advantages in common? I believe so.

Does it make any difference whether your son be apprenticed to Mr. Bransby Cooper, Mr. Key, or Mr. Morgan, as regards the instruction that he should receive? Not that I know of, Sir.

Dr. Roget, examined by Sir James Scarlett.

You are a physician? I am, Sir.

I believe you have been some years practising in London as a physician? I have, twenty years.

Allow me to ask whether you have, at all times, in the course of your medical studies, in the course of your medical pursuits, paid particular attention to anatomy? I have, Sir.

I believe, in early life, you gave lectures upon comparative anatomy? I did, Sir.

Have you, in the course of your practice, had frequent opportunities of seeing Mr. Bransby Cooper? I have, professionally.

In cases where both the presence of surgeon as well as physician was necessary? In mixed cases, where surgical and medical attendance was necessary.

Now, I beg to ask what is the opinion you have formed of him? As far as those opportunities go, I have formed a high opinion of his skill and judgment.

I beg to ask you, have you seen this report in "The Lancet?" Not before yesterday, when I heard it in this court.

I beg to ask you, as a medical man, whether that is a report that you should have thought would come from any surgeon or professional man whatever? Certainly not.

Cross-examined by Mr. Wakley.

What cases have you attended, Dr. Roget, with Mr. Bransby Cooper? Cases of a mixed nature in which surgical operations were required.

Will you be kind enough to state one or two of them? Not capital operations—operations of minor importance.

What were the medical cases? Inflammatory cases, for instance.

Did Mr. Bransby Cooper prescribe medically? He did not.

Can you describe any operation you saw him perform? I don't recollect that he

prescribed—we consulted together—I don't recollect his having written any prescription.

Can you recollect any operation he performed? I can.

Name it? (Lord *Tenterden*. Consulted together as to the medicine?) Consulted together as to the medicine, and as to the propriety of the operations.

Mr. *Wakley*. Do you believe, Dr. Roget, you can form an accurate opinion of the manner in which a report should be written, unless you saw the operation respecting which it was written? I think I can.

How then would you have written this report, not having seen the operation? I cannot say how I should have described it. (*Laughter.*)

Re-examined by Sir James Scarlett.

Can you say you should have put it into the form of a tragedy, in acts? Certainly not.

Nor clothed it with ludicrous jokes? I never should have dreamt of it.

Is it in the manner of a report of a man of candour and science? Certainly not.

Mr. John Morgan sworn. Examined by Mr. Pollock.

Are you one of the surgeons of Guy's Hospital? I am, Sir.

Have you ever seen Mr. Bransby Cooper operate? Very frequently.

How long have you known him as connected with that institution? I think about nine years.

During that time, have you seen much of his practice as a surgeon? Occasionally I have, in the hospital.

Have you ever seen him operate? Very frequently.

What is your opinion of his skill and competency as a surgeon? I have the highest opinion of Mr. Bransby Cooper as an operator and as a surgeon, generally.

In the account given by Mr. Callaway of the operation, do you discover any indication of want of skill? I do not.

Mr. *Wakley*. I shall put no questions to him.

Mr. John Hilton sworn. Examined by Mr. Scarlett.

Are you one of the pupils at Guy's Hospital? I have been, Sir; I am now assistant demonstrator of anatomy.

Lord *Tenterden*. At the hospital? Yes, my Lord.

Mr. *Scarlett*. Were you present at the post-mortem examination of the body of this patient? I was, Sir.

Did you observe the fact, whether he had a deep perineum or not? I did, Sir.

What was the fact? While Dr. Hodgkin was preparing to examine the body, I passed my finger from the external wound into the perineum.

Could you reach the bladder? I could not, Sir.

Could you reach the prostate? I believe I could, but I am not positive.

Sir *James Scarlett*. Did you see the parts after they were separated from the body? I cannot say I examined them particularly.

Cross-examined by Mr. Wakley.

Could a stone be very peculiarly situated if it could be extracted with a straight pair of forceps? I imagine, that a stone at one part of the operation might have been peculiarly situated, have dropped from that situation, and then be very easily extracted by the straight forceps.

Lord *Tenterden*. That's only imagination? Only imagination.

Did you witness the operation? I did not.

Sir Astley Cooper sworn. Examined by Sir James Scarlett.

Though I have the honour of examining you, Sir Astley, you were subpœnaed by the defendant, Mr. Wakley, I believe? I was, Sir.

Is Mr. Bransby Cooper your nephew? He is.

You have heard the account given of him by Mr. Harrison, with respect to his education? I did, Sir.

It is only to prevent the occupation of time that I ask you, whether that account be correct? Perfectly correct.

We understand that he was apprenticed to you, Sir Astley, whilst you were the surgeon at Guy's hospital? He was.

Having an opportunity of living in your house, and witnessing a great deal of your practice? Constantly.

Before he came into that situation, he had opportunities of becoming informed generally of the nature of the profession he now follows? He had been previously at the Norfolk and Norwich Hospital, where he remained about two years; he then came to London, and studied at Guy's and St. Thomas's Hospitals; then an appointment in the artillery was obtained for him; he went to the Peninsula, and there he had an opportunity of witnessing all the more important actions in that country; as for example, Vittoria, Salamanca, and lastly, Toulouse; so that he had a great opportunity of seeing that species of practice which occurs in a campaign. Then he went to America, where he remained rather more than a year, and upon his return to England he went to Edinburgh, and remained there nearly two years. But still, not thinking, myself, his education fit for a surgeon of the hospital, I bound him an apprentice to myself, and he remained with me for six years after that.

It 's a delicate subject, but I beg to ask, Sir Astley, what, from the information you have derived of his practice, what is your opinion of his competency? If I had not believed him competent for the situation, you may rest assured, if it had been in my power to have prevented his appointment, although the plan was not my own, he never should have been surgeon to Guy's Hospital.

Did you exercise any influence of any sort whatever to place him in that situation? The plan was entirely that of the Treasurer and Governors, but as it was a circumstance in which my interest was exceedingly involved, they thought it necessary to mention it to me before they carried it into effect, because I was to make very considerable pecuniary sacrifices; and if I may state it to the court, though it may appear to be egotism, I wrote a letter, saying, that I had no objection to the plan—

Lord *Tenterden*. We must not hear what was in the letter.

Witness. Being carried into effect, whatever sacrifices I might make, because I thought it might be conducive to the interests of the school and Guy's Hospital.

In the course of your very extensive practice, you must often have been under the necessity of sending a substitute, have you found in your nephew a competent substitute? Certainly, or I should not have sent him.

I beg to ask, in your solemn judgment, which we always know is the very best on that subject, is there the slightest ground for imputing to him want of skill? I think him a good anatomist, and that he is a very, very, very good surgeon. But let me say this, that a man, when he first enters into hospital practice, however clever he may suppose himself, he must necessarily have yet experience to acquire; one cannot say that a man, therefore, is perfectly accomplished at the time he first enters into a hospital; but give him time,—do not crush him at the outset of his career, and you will see that the abilities he has, the knowledge of anatomy he possesses, the experience he has attained, and the experience he will gain, will make him one of the best surgeons in this town.

Probably you have performed many more operations for the stone than any other surgeon of the day—probably, more than you can recollect? A great number.

How many hundreds can you speak to? I should be very sorry to say, on my oath, further than this, that I have performed eighteen operations for the stone in one year, and I have been engaged in the active duties of my profession, as an operator, for 25 years.

You have heard the account given by Mr. Callaway? Yes.

Which, for the present, I beg to assume is the correct account; and then I would ask, do you perceive any thing in that account, in the length of time, and in the number of instruments used, that would justify any charge of any want of skill in that operation? May I say one word with respect to time: nothing is a greater deception on the public mind than to say, I did an operation in so short a time, that is, in one, two, or three minutes. The fact is, that time is not a criterion by which you are to judge of the skill; and I may here say, that I have had the

honour of operating on two of the first lawyers in this country, because it's very applicable to this court. One of them was Mr. Sergeant Lens, I was two minutes, I believe, in that case; and the other was the Master of the Rolls, where I was half an hour. Well, if you ask me, as I am standing here, knowing that I am upon my oath, whether the one operation was not as well done as the other, I would say, I was tried in the one operation, but a child might have performed the other. The difficulties in the one case were the same that my nephew experienced; though instead of the stone being locked in the upper part of the bladder, between the folds of the bladder, it was nothing more, though a good deal has been said of this case, than that the bladder, when it contracted after the urine had been evacuated, had got the stone between its folds behind the pubes, and when my nephew passed the forceps into the bladder, he passed them beyond the stone. From the delay, the man became greatly exhausted, and then the contractions of the bladder relaxed, the stone dropped from its hold, and then my nephew laid hold of it: but in the case of the Master of the Rolls, the stone was lodged below, in a well behind the prostate; as soon as it was seized, it broke into fragments, and the forceps were under the necessity of being dipped into this well to receive those fragments, and this took up a considerable time, but that was the whole. Therefore, with respect to time, it is not to be considered a criterion of skill in the operation.

Has it happened to you to be sometimes an hour? It has happened to me to be an hour; and the curious circumstance is, that it was an extremely small stone: and it is right that it should be known here that the small stone produces difficulty; it is locked between the folds of the bladder; but a large stone—only put the forceps in, you strike it, and therefore you readily seize it.

I am sure I don't mean to put your judgment in competition with the young gentlemen's who have been six months at Guy's, or even the celebrated Mr. Lambert's, but from what you have heard yesterday, do you conceive them to be competent judges? No man can be a judge of the operation for stone, who has not performed it, and no man can be a competent judge of the difficulties of the individual case who has not performed it.

Allow me then to ask this question, with all your experience and science,—if you had witnessed an operation in any school which had lasted an hour, and where you had seen the various events take place, that the witnesses have described on both sides to have taken place here, should you have ventured to have formed a judgment upon it, without speaking to the operator, and without knowing his explanation of the circumstance? I should have thought myself in the first place very unkind, in the second place very unwise; unkind, because I should not wish to injure the character of another, and unwise, because it was absolutely impossible I could form a judgment in the case of another.

Cross-examined by Mr. Wakley.

You state, Sir Astley, that you should not form an opinion, unless you were the operator in any case; but I beg to ask you, whether in your lectures you have not given an opinion on a great number of cases, such as we are now describing? I don't think I have given any description, in my lectures, of any operation exactly similar to this.

But you have given descriptions of bungling operations? Oh, I have always thought that a duty: I know that our profession is not a bed of roses; that, do the best we can, we very often fail in our best endeavours, and I have wished to point out to the pupils what they must expect to meet with: I have always considered it my duty not to conceal what they should expect to meet with, in adverse cases as well as in others, otherwise I should not have considered myself candid.

Have you stated in your lectures, that a man to become a great surgeon, must, like a great general, wade up to his neck in blood? I don't know—I may have said so, I am sometimes fond of using strong expressions: I like to be understood.

And you think your nephew will rise to great eminence if we give him time, and do not crush him in the outset? I think he is already a very good surgeon, but I do not believe he is a perfectly good surgeon; a complete surgeon cannot be made at once; therefore I think it one of the greatest evils to society, that in early life a person should be crushed by the press in consequence of one misfortune. We

this is a misfortune that might have fallen to any one; it was necessary, however, that a court of justice should determine whether it was or not.

But do you not think the public interests would be best promoted, by placing in the hospitals experienced men, and not men who are to wade through blood to their necks, like great generals to gain experience? I think it's foreign to the subject; (*laughter*); but I think in every hospital there should be an assistant surgeon that he may be prepared to take the office of surgeon.

Your nephew is surgeon? He is.

And he was not assistant surgeon before he became surgeon? He was not, but I think it would be a good regulation in all hospitals.

I shall only ask you another question or two, for your opinion is of great importance, and ought to be considered so: you have stated this stone was lodged in the folds of the bladder immediately behind and above the pubes? Yes.

Now, if the man, when in the erect position, had urine in his bladder, and when taken from his ward to the operating-table, still with the urine there, do you not believe that the stone would have been at the bottom of the bladder, and not in the situation you describe unless it had been attached to the substance of the bladder? No—I'll explain it—this man must have made water very recently before the operation, because it appeared the bladder contained but very little: well, the result of a person's making water just before an operation is, that the bladder falls into folds: now, if that man had been put upon the table with his bladder full, the stone would have been immediately struck, but in consequence of making water just before the operation, the bladder fell into folds, and the stone was contained within them.

From which is the greatest danger to be apprehended—cutting the bladder, or bruising it? I should say the great danger is in violence.

Now, supposing this stone had been felt, and there had been a difficulty in extracting it, would it not have been the more prudent course, after trying to extract it for, perhaps, eight or ten minutes, to have placed the patient in bed again? I think no surgeon would do that who felt the stone: I have seen surgeons perform the operation again and again, and not succeed in finding the stone, when they have they have previously thought they have felt it; but I never knew a person put to bed after the wound had been once made, and the bladder been opened, if the stone could still be felt, till the whole operation was completed.

Are you acquainted with the writings of Celsus? Why, I have dipped into Celsus—(*laughter*)—I don't think him a great surgical authority, though I think him a great classical one.

But are you not aware that it is the practice with surgeons in Paris and Edinburgh to send the patient to bed again in five or six minutes, when they cannot extract the stone? I have been in Edinburgh, and studied there; and I have been in Paris repeatedly; but I never saw that occur, nor did I ever hear of it.

Can the contraction of the bladder last for any length of time? Yes, a spasmodic contraction of the bladder might last for an hour: now, I will give an example;—I went, where I went very frequently indeed, into the theatre of St. Thomas's Hospital, when an operation for the stone was performing by a gentleman in this court at this moment: well, a great difficulty occurred in the removal of the stone, and I said that the bladder corrugated around the stone, so that just the point of it can be felt: the surgeon then passed an instrument closely between the stone and the bladder instead of opening the forceps, and though a considerable time had elapsed then, still the spasmodic action of the bladder had not given way.

If the patient were removed and placed in his bed, and if the stone were allowed to remain, in such a case, what inconvenience would arise? Only what you would not like, that is, two operations instead of one. (*Laughter.*)

Would it be any more than introducing the forceps a second time? Oh yes! oh, God bless me, yes—I assure you it's no entertaining thing, to have the urethra opened, a knife passed into the bladder, and your finger afterwards forced into it: besides, how do you know the same difficulty would not afterwards occur: no, if I felt the stone I should persist till I had removed it.

You state that it's impossible to say how long the contraction might remain? *An hour, perhaps,* it might remain, but I defy any body to say; you are talking about

the bladder as if it had not the power of contraction at all: if you had passed your finger into the bladder of a dead subject, and if you had ever put your finger into the bladder of a living subject, supposing you would know the state of the one from the condition of the other, you would know no more of what was going on in that, than you could know of what was going on at this moment in the moon.

Well, if I had not known what was going on, on getting my finger into it, how should you know what took place in the case we are alluding to, while you are standing there? But you could not have got your finger into the bladder.

You said so? No, I said no such thing.

I beg your pardon, you did, and I have no other question to ask.

Re-examined by Sir James Scarlett.

You say he had been in the army before he came there—he had been surgeon, had been assistant surgeon in the army, he had been demonstrator on anatomy? Yes.

And to your satisfaction? O yes, and that was one reason which I had for being pleased that he should be appointed at Guy's, for I found the pupils had been all extremely pleased with him as a demonstrator, and gratified that a man should be appointed, who had the power and the manner of communicating information to them, so easily, and so clearly as he had.

Mr. William Dalrymple sworn. Examined by Mr. Pollock.

Are you the surgeon at the hospital at Norwich? I am senior surgeon.

How long have you been so? I have been assistant surgeon and senior surgeon there, rather more, I think, than sixteen years.

Now, have you much practice in lithotomy in that hospital? We have had, from the first institution of the house down to the present day, a large experience in that operation, which was established in 1771; and we have a cabinet which contains specimens, the products of 659 operations for the stone.

Was Mr. Bransby Cooper a pupil there? I remember him coming to Norwich: I remember perfectly well his being a pupil at the Norwich Hospital previously to my connexion with the house.

Was Mr. Bransby Cooper attentive to his studies there? I was not at that time connected with the house; I was a visitor; I had the *entrée* to the house by permission of the men at that time there: I thought Mr. Bransby Cooper a remarkably clear, intelligent, quick boy, and I wished very much he had been my pupil.

Now, Sir, have you yourself frequently performed the operation? I have performed it very nearly fourscore times; seventy-six times; I have seen not fewer —I have been personally present at not fewer than very nearly three hundred lithotomy cases.

Did you attend to the statement of Mr. Callaway of the operation in question? Most closely.

Did you find, in that account, any indication of want of skill or attention on the part of Mr. Bransby Cooper? Quite the contrary.

Now, Sir, supposing the stone was a flat stone, situated in the anterior of the bladder, above the pubes, does that circumstance satisfactorily explain to you all the difficulties, or do you require more information from all the other circumstances? It perfectly explains the whole case to me, and it has occurred to me, the same difficulty—essentially the same in nature, though different in degree, has assailed me in five or six of my operations, and has made the operations double, treble the time, perhaps, than they otherwise would have been, though I am not ambitious of being a quick operator.

On such occasions, have you found it necessary to resort to various instruments, Sir? I never began an operation, either in an hospital, or in private practice, without having a larger assortment of instruments than were named in this court. I never go unprepared with fewer than four different pairs of forceps.

Well, Sir, if occasion required, would you have hesitated to introduce the whole? Sir, I have been tried to the utmost in that way. I have been so unfortunate as to perform an operation in a case in which the stone was so large as to make it impos-

sible to extract it, and in which the patient was removed from the table to bed to die in three hours.

Have you had an opportunity of witnessing Mr. Bransby Cooper operate? Within the last three years, it was my good luck to see him operate for strangulated hernia; there was an——

Well, Sir, I will only ask you have you had an opportunity of judging of him as to his abilities? I feel no difficulty in believing, and in saying I believe him to be a most efficient hospital surgeon.

Lord *Tenterden.* You have seen him operate? I have seen him within the last year and a half perform an operation extremely well.

Cross-examined by Mr. Wakley.

Have you a son at Guy's? No.

In the case you speak of, where the stone could not be extracted, and the patient died, was the stone very large? It weighed nearly fourteen ounces: the case is before the public.

You understand the stone in Mr. Bransby Cooper's case was two drachms? I am quite aware of that.

Is there an anatomical school in Norwich? There is not.

Was there ever one? There never was that I know of; I have heard that some young men attempted to get up one; I don't know that it was so; I was applied to for assistance—I discouraged it in a gentle way—I thought it was not likely to be useful to the profession there, and I gently discouraged it there.

You mean by discouraging it, you would not allow the pupils to attend your hospital? I beg your pardon, any young men wishing to become pupils and dressers in our hospital, were of course admitted.

What do they pay? Fifty guineas as dressers for perpetual, and twenty-five as dressers for a year.

But you would not admit the pupils from the other school gratuitously? Certainly not.

Re-examined by Mr. Pollock.

You say you discouraged the attempt to institute an anatomical school there? In a very gentle manner.

I want to know whether you thought it would be advantageous to the profession to have it there, or better that the pupils should attend in London? I certainly think anatomy will be always the most efficiently taught in the metropolitan schools; but there were local circumstances there at the time which would have made the formation of an anatomical school extremely inconvenient.

Mr. John Watson sworn. Examined by Sir James Scarlett.

I believe you are secretary to the Court of Examiners of the Apothecaries' Company? I am, Sir.

What is your department with respect to the licensing? It is my duty to see that the testimonials required by the Act of Parliament and Court, are such as are required.

Will you have the goodness to take that book into your hand: you see that paper which is pinned to that book? I do, Sir.

Do you remember a young man of the name of Clapham coming for his certificate? Sir, there are so many persons come, that I don't remember the person of each; but, upon reference to my books, I find that a John Clapham came to be examined on the 24th of April last.

Upon whose recommendation as to his moral character? On reference to my notes, it was upon the recommendation of James Lambert, of the Walworth-road.

Now, have you got the certificate of his birth? I have not a certificate of his birth; but I have what purports to be an affidavit of his age.

Is that the original? Yes; it has my mark upon it.

And is it that upon which he obtained his license? Upon which he obtained an admittance to be examined.

Put it in, if you please.

[*The certificate was then handed in by the officer of the Court, and read by him to*

the following effect: "*Middlesex to wit—John Clapham, of* 21, *Oxendon-street, Haymarket, medical student, maketh oath, and saith that, to the best of his knowledge and belief, he is twenty-one years of age.*" *It is signed* "*John Clapham,*" *and appears to have been sworn at the Public Office, Hatton-garden, on the* 21*st of April,* 1828.]

Sir *James Scarlett.* Now, is he described in your book as of the country? He is described as an apprentice to William Clapham, of Ely, in Cambridgeshire.

Is there any description of him as living or being at Thorney? I will refer to another book. On the 24th of April, in a book which candidates are obliged to sign, containing a declaration that the papers they have produced are correct, here is a person of the name of John Clapham, Thorney, as the place of his then residence.

A Juror. Did you know James Lambert that recommended him? I did not.

Did you make any inquiry as to him? I only knew there was such a person in existence as James Lambert.

Cross-examined by Mr. Wakley.

Read the certificate of Mr. Lambert? I have it not; the student, perhaps, may have it, or Mr. Lambert may have it, for any thing I know: it 's only a note of it that I have.

But, did it show that he knew that Mr. Clapham was applying to you? Seeing so many, I cannot recollect; but it is stated that he was a person of moral character.

Did it *appear* that he knew he was applying to you? No; I don't recollect that it did: all that is my duty to see is, that it was a certificate of his moral character.

Not of his age? I am not aware that Mr. Lambert said any thing about age.

Sir *James Scarlett.* That 's my case, my Lord.

THE REPLY.

After the evidence was concluded, Mr. Wakley rose to reply, and spoke as follows:—

May it please your Lordship—Gentlemen of the Jury—At the commencement of this cause yesterday morning, you heard it insinuated by the learned gentleman to whom I am opposed, that my case, in all probability, would break down from some plea not being substantiated, and that there would be a difficulty, probably, in the way of the learned gentleman's bringing forward his witnesses to prove the high and exalted character, and the extraordinary skill of this Mr. Bransby Cooper! At that time I took the opportunity of intimating to the learned gentleman, that he need be under no apprehension on that head, because I felt fully assured I should be enabled perfectly to complete the case with which I had set out, and to answer every charge in the plaintiff's declaration. But, Gentlemen, from the course which the learned gentleman has pursued to-day, I fear that I shall be under the necessity of occupying a much greater portion of your time, though it is now so late, than will be pleasant to me, or will be agreeable to you. It seems that this attack, which was first made on Bransby Cooper, is now made an attack upon myself; and really, from the descriptions given by the learned gentleman, you must look on my work as the most infamous in existence, and view me as too detestable to be tolerated in any society. I was charged as a robber; I was denounced as a literary pirate: in fact, there was scarcely any epithet which the learned gentleman could use that he did not employ to scandalize my character. Gentlemen, it was stated to you, again and again, that I had entered the

lecture-room, and plundered the lecturers of their property; and that I was employing a set of men who are almost the outcasts of the profession, to use means which could not be recognised in any country where honour exists, with a view to emolument on my part, that I might live in luxury in a splendid establishment, and that I might roll through the streets in my carriage, and laugh—laugh at those whom I had plundered. Gentlemen, if I have acted in this way, I hope you will show, by your verdict this day, that you disapprove of such conduct as much as Sir James Scarlett. But, on the other hand, if I show you; first, that all these accusations are unfounded; and if I show you, secondly, that Mr. Bransby Cooper has not answered any one of the charges I have brought against him, then, Gentlemen, shall I lay claim to your verdict; and, in fact, I do not see how it is possible, with the evidence before you, you can return a verdict for the plaintiff. It is impossible for me to say whether Sir James Scarlett has made these accusations against me from report, or from the instructions that he has received from his client: if from report, I must consider that the learned gentleman has acted most indiscreetly; and if from the instructions of the plaintiff, I think the learned gentleman's client has shown a still greater want of that discretion which ought to have been displayed; because his client knows, at all events, that every accusation he has made, with respect to the lectures, is totally without foundation. From the commencement of my Journal, I have advocated the right of publishing the lectures of PUBLIC TEACHERS, but I have never advocated the right of publishing the lectures of *private* teachers, or of going to any private places of instruction with the view of converting to my use the literary labours of others. Now, Gentlemen, what lectures have I published? Those that have been delivered in St. Thomas's Hospital, which is a public institution: those that have been delivered in St. Bartholomew's Hospital, which is a public institution. In the one case I had the PERMISSION of Sir Astley Cooper [*pointing to Sir Astley, who was seated on the bench*] to publish his lectures; in the other case, it is true, I had not the permission of Mr. Abernethy, but a court of equity conceded to me the right. I contended for this right in the Court of Chancery, day after day, and week after week; not upon any legal technicality, not upon any paltry subterfuge, but upon the ground of public expediency, upon the ground of public utility, upon the ground that public servants, wherever they were seated, were public property, and that we had a right to be acquainted with their actions. Mr. Abernethy resisted the claim; he resisted the attempt that I made to lay his lectures before the public, stimulated to that resistance by the very individuals who have come into the witness-box to-day to swear to the abilities of Bransby Cooper; these are the very individuals who subscribed to crush both me and "The Lancet," in "The Lancet's" infancy: how they have succeeded, is known to the public and the profession; their names have only been by-words, at all events, with the liberal part of the profession, from that hour. I have, it is true, published the lectures of other teachers; but in every instance in which I have done so, I have had their permission,

Six lectures, I believe, of Mr. Green's, on diseases of the eye, were published from the theatre of St. Thomas's Hospital, but they were delivered there as part of Sir Astley Cooper's course: and I believe he is correct in stating that five of those lectures were very inaccurate, but the other was perfectly correct: the inaccuracy, this single inaccuracy, arose from accidental circumstances, with which I will not trouble you. But the lectures taken at St. Bartholomew's Hospital were so accurately published, that Mr. Abernethy made an affidavit which was presented to the Court of Chancery, in which he swore that they were taken word for word, and syllable for syllable, as he had delivered them. Now, what is St. Bartholomew's Hospital? Is it not public property? Have the public no right to it? The surgeons have no right to close the doors against the public, and to allow of nothing but "hole and corner" proceedings. This was a practice I intended to resist; it is a practice I have resisted with a success as beneficial, I believe, to the profession, as it has been to the public. Now with respect to the other lectures, those of Dr. Armstrong, Mr. Lawrence, Dr. Blundell, Mr. Alcock, Mr. Brande, Dr. Clutterbuck, Dr. Spurzheim, Dr. Haslam, and others; they were all published WITH THE CONSENT OF THE LECTURERS; this I stated in the first number of the present volume, with a view that the public might know exactly how the thing stood;—with your permission, I shall read that part of the number; it is exceedingly short. [*Sir James Scarlett*—If you read that, I shall have a right to reply.] *Mr. Wakley*—Then I shall desist, certainly. Sir James Scarlett has been entirely deceived on this subject. There must have been some gross misrepresentation made to him. You have had no evidence tendered to you that the lectures had been stolen, and yet at the very outset of the learned gentleman's speech, it was stated to you that nothing would give me greater satisfaction than that I should be able to destroy the authors of the lectures; but, gentlemen, nothing would lessen the character of an author so much, or be so calculated to injure a work, as unfounded aspersions, or to publish statements that are incorrect. Having said so much on the false allegations relative to lectures, I shall now come to the immediate subject before you; and certainly it appears to me the proceedings of this day are the most peculiar that ever took place in a court of justice. In fact, they are so extraordinary that I cannot, I cannot by possibility, find words to express the astonishment I feel, after the boasting and vaunting of yesterday morning, and after the boasting and vaunting of this morning. Why, Gentlemen, it was stated that this report is a fabrication from beginning to end—that it originated in nothing but malice—that it had its foundation in a private quarrel between Mr. Lambert and Mr. Bransby Cooper—and, in fact, that the operation, as reported in THE LANCET, was a *supposed*, merely a *supposed* operation. What are the facts? From one of the plaintiff's own witnesses you have heard that there were present nearly two hundred individuals,—I believe there were more. How many gentlemen have come forward—how many of the spectators of that operation—how many have come forward to speak to the inaccuracy of the report—how

many, I say? Out of two hundred spectators—*one;* a solitary ONE! Why, it speaks more, that one fact carries with it more than I could communicate to you in a month. What, not with all Mr. Bransby Cooper's influence, not with all his power at Guy's Hospital, not able to produce but *one* eye-witness? And who besides have come forward to speak to the inaccuracy of the report? Gentlemen from St. George's Hospital! Sir Astley Cooper, from Conduit-street! Dr. Babington, from Aldermanbury! and I cannot conceive why they have not also brought forward the Emperor of China and the Great Mogul. (*Roars of laughter.*) It is the grossest insult ever offered to a jury, and the veriest farce that was ever exhibited either in this or in any other court! Are you to be so blinded, so deceived, so duped, as to believe that this operation was a supposed operation, and that the report I have published is an incorrect report, when only one witness out of two hundred comes forward to speak to its inaccuracy? Why, I never heard,—I never heard of a proceeding so extraordinary! I never saw a proceeding which at all could be considered as coming within the bounds of probability when compared with this. I knew, Gentlemen, when I made my election to conduct my own cause, I should lose, in consequence of a rule of the court and the etiquette of the bar, the benefit of two most excellent speeches, and the support of two most able advocates. I also knew, in making my election to conduct my own defence, that I should be opposed to a gentleman of unrivalled legal learning, and unrivalled ingenuity; and I must confess, after having heard so much of that gentleman's talents, I did not, I could not, expect that he would have made such declarations as he did this morning, while at the same time he knew it was not in his power to come forward and substantiate scarcely a thing he said. The man was represented as coming from Lewes, in Sussex, and that it was a difficult case; the surgeons of Lewes would not operate upon him, and consequently he was sent to London to be under the skilful treatment of Mr. Bransby Cooper, at Guy's Hospital. Have the surgeons of Lewes come forward to make any such statement? Have they said there was any thing extraordinary in the case before the operation was performed? Nothing of the kind; no such evidence has been adduced, and consequently that declaration, like many others, has, in truth, no foundation whatever. Sir James Scarlett spoke of the taste with which my work was conducted, and spoke of the utter want of feeling that must have characterized my conduct in giving currency to this report. The learned gentleman spoke of the *hireling* Lambert, employed at eight guineas a month to send me communications; but Sir James Scarlett had forgotten that he himself was acting for hire at the very moment he was speaking. Gentlemen, we are all hired, we all work for lucre, and Sir James Scarlett has worked for lucre, and is working for lucre as well as myself and Mr. Lambert. (*Laughter.*) You have heard, Gentlemen, the name of *Bat* mentioned. It has been stated that there must be a great want of taste, a great want of propriety in my conduct, in using such a term. But had Sir James Scarlett studied zoology, he would have found that the word is exceedingly accurate when ap-

plied to the description of beings to whom it is applied, and I have no doubt that it will be retained by them as honourable in after-ages. If we have *Whigs* in the political state, why should we not have *Bats* in the surgical? I am sure that hospital surgeons are just as much, or more, like BATS, than Sir James Scarlett is like *sour milk*—(*much laughter*)—and yet that is the meaning of Whig. The conduct of hospital surgeons warrants the application of the name. Bats belong to the class *mammalia;* they move in the dark, they suckle their young, they live in the creaks and crevices of old walls, hospitals, and dungeons, they thrive and fatten on the destruction of their prey, and I fear it is too frequently the case, that hospital surgeons thrive and fatten in nearly a similar manner on the miseries of their fellow-creatures. Gentlemen, when I opened my case yesterday morning, I told you, I had every reason to believe, before I published the report which you have heard read, and which is incorporated in the declaration, that it was true; you heard me state therefore, that I had then every reason to believe it was true; I now believe it is true, and I think, Gentlemen, you have every reason also to believe that it is true. The witnesses I have placed in the box, who were the spectators of that horrid scene, have given evidence which remains untouched, wholly uncontradicted. I do not know of a single fact, represented in the report, that has been refuted. I do not know of a single statement, made in the report, that has been proved to be false. The evidence of Mr. Bolton, of Mr. Partridge, of Mr. Thomas, of Mr. Pearl, of Mr. Gilbert, and of Mr. Lambert, remains uncontradicted. Mr. Clapham's evidence I do not name, in consequence of the circumstance which has just transpired. Of Mr. Clapham I had no knowledge till yesterday; I never saw him till yesterday, I never spoke to him till then; and though such attacks have been made on the characters of my witnesses, though so much has been said of what took place out of court respecting lectures that have been given, yet, out of nine witnesses whom I have placed in the box, I never saw five of them, nor ever spoke to them, till yesterday. If there be discrepancies in their evidence, with regard to the manner in which the instruments were used, who can be surprised at that circumstance, when you have heard from the mouth of every witness the confusion of the operator while operating? How is it possible that the witnesses could remember what was passing, when it has been proved to you that the operator himself did not know what he was doing? Mr. Bolton, Mr. Partridge, Mr. Lambert, Mr. Pearl, and Mr. Gilbert, spoke positively to his confused state of mind. Mr. Callaway, indeed, has opposed them, and has stated that the operator was not so much confused! When, however, Mr. Callaway was asked if the operator had used force, his expression, I believe, was,—"I *think* not much," or, "I *think* not more than was necessary." But what part of the report did Mr. Callaway prove to be incorrect? Taking his evidence as having weight, even as against the evidence of five, or, at least, of four disinterested spectators, leaving Mr. Lambert out of the question, who was the writer of the report, and who would be glad, of course, to see that what he had stated would be supported by others—is there a single fact in the

report, that you can call to your recollection, that Mr. Callaway, by his evidence, has refuted? Is there one circumstance? I asked him generally, if the report was correct or incorrect, and he would not speak directly either one way or the other. He thought *much* force was not used, and he *thought* no more force had been used than was necessary; yet this is the case which was to break down, and in which the learned gentleman would not have an opportunity of producing his witnesses to prove the high and skilful character of the plaintiff! There is one part of my case, Gentlemen, which appeared somewhat weak until very late this evening, I mean that part relating to the influence of Sir Astley Cooper in the conduct of the affairs of Guy's Hospital; but Sir Astley stated in the box, that "knowing how much *his* interests were concerned, they were anxious to place Mr. Bransby Cooper in the office of surgeon," and, therefore, said Sir Astley, "give him time, let him work his way, and I have no doubt he will be a most excellent, a most thriving surgeon, a most brilliant operator!" But is that the way in which our hospitals are to be conducted? Is that the mode in which our poor patients are to be treated? I ask, are young and inexperienced men to be placed there *to learn* their profession, not to know it before they get there, but are to go there to learn it, and learn it upon whom? upon individuals who are as much entitled to the best and most scientific practice of surgery, as any nobleman in the land. For, to whom does Guy's Hospital belong? not to the Governors, but to the Poor, and who, in consequence of the vast funds of the institution, have a right to the very best surgical practice that can be obtained. Is any man, or any set of men, to convert that institution into a mere school of anatomy and surgery, and to overrun the wards of the hospital with pupils, by framing laws calculated to prevent teaching in country hospitals, so as to make the wards of this hospital a mere nuisance to the poor, instead of a place of peace and quiet and safety for them? Who will contend for it? I cannot believe that any person in this court, possessing even common sense, I cannot believe that any of you, will be found to say that you are satisfied such a practice should be tolerated in this or in any other country. Yet, you have heard it is done in this hospital, you know it is done, from the evidence of Sir Astley Cooper himself. Gentlemen, I expected from the outset that this was a cause of so much importance, and that so many interests were involved in it, besides those of the parties immediately concerned, that I trusted Sir James Scarlett would not throw legal technicalities in my way, and in that I have not been disappointed. Sir James Scarlett, excepting the attack he made upon my character this day, has conducted himself towards me with the greatest urbanity; and considering that I am altogether inexperienced in courts of law, I have received very great indulgence from him, for I fear that I have caused him much trouble. When a gentleman, Mr. Harrison, was called upon to state if the testimonials of Mr. Bransby Cooper were produced at the time he was elected to the office of surgeon, that gentleman said they were not necessary, for that he had always been under their own eye—in fact, that the whole house was disposed to elect him. What

he meant by the whole house I don't know; whether he meant the bricks and mortar of which the building is composed, whether he meant the nurses in it, or whether he meant some other materials equally brainless, it is impossible for me to say; but it is a very curious fact, that when the appointment of Mr. Bransby Cooper took place, Sir Astley Cooper was appointed consulting surgeon, and Mr. Callaway assistant surgeon at the very same time. John Hunter used to say, that bad surgeons were like bad carpenters—they made work one for another, and that good surgeons, in fact, would starve if it were not for unskilful ones. (*Laughter.*) It seems that John Hunter's axiom found its way into Guy's Hospital, for presuming on what the operations of Bransby Cooper would be, it was thought necessary to elect a consulting surgeon and an assistant surgeon at the same time, to accomplish the additional work. (*Continued laughter.*) I really can give no other explanation of the three appointments on the same day; because the surgeons were young men, the contemporaries of Mr. Bransby Cooper were young men, and when there were two old men, and one young man, there was neither assistant surgeon, nor consulting surgeon. Therefore, taking all the circumstances into consideration, viewing it simply as a matter between Bransby Cooper and the Governors of Guy's Hospital, and not as a matter between the public and Guy's Hospital, you must perceive, you must believe, and you can come to no other conclusion, than that it was entirely owing to the relationship in which Mr. Bransby Cooper stood to Sir Astley Cooper, that he was elected to the office of surgeon. In the absence of all testimonials, would he ever have been in that office had he not been related to Sir Astley Cooper? It is a question which I wish you all to ask yourselves; and, having once asked yourselves that question, I am certain that I shall be perfectly well satisfied with the answer you will give. Something has been said relative to advertisements. Oh, it could not satisfy me, or please me, unless advertisements were inserted—unless advertisements were sent to "The Lancet," or some other newspaper or journal. Gentlemen, it is considered, and I have always heard it said, that you have a greater chance of getting men of talent from a large number of individuals than from a small number; and I think that the offices in Guy's Hospital would be much better filled if the profession generally knew when those offices became vacant, that men of talent, ability, and industry, might have an opportunity of coming forward to offer themselves as candidates to fill those offices; men of experience and men of learning—men who had not to learn their profession, and to learn it upon the misfortunes of their fellow-beings, but men who had acquired a knowledge of it by a regular course of study, and who would go there in all the plenitude of information and vigorous intellectual powers. We all know that when individuals are stimulated by the prospect of office, they become more industrious, more anxious to qualify themselves for the discharge of the duties of their profession, in the hope of attaining the highest situations, the greatest quantity of emolument, and the largest share of honour; but how can such things occur with respect to Guy's Hospital, if such a course of proceeding is

continued as that which is now practised there? It can never happen—never can there be such officers, as if they were elected from the great body of the medical profession. I wish, now, Gentlemen, to direct your attention more particularly to the facts of this case—because if those facts remain uncontradicted, then, I believe, that you and I shall arrive at the same conclusion.—[*Mr. Wakley became now so exhausted, as to be under the necessity of withdrawing for a few minutes into the open air. On his return he resumed:*]—Gentlemen, I have to apologize for the short interruption I have occasioned; but really I am so exhausted from the heat, and the two days' great anxiety I have laboured under, that I am almost incapable of addressing you. I believe when I left the court, I had just been speaking of the absence of the persons on behalf of the plaintiff who had witnessed this operation; and probably if Sir James Scarlett had opened this case, as he wished to have done, yesterday morning, I should not have called a single witness; for I am convinced I could fully have substantiated my case from his witnesses, and from them only. As to the technicalities of the pleas, I hope, in a case of this kind, they will be considered entirely out of the question. Mr. Bransby Cooper charges me with having falsely and maliciously injured him by the publication of a report of an operation which is altogether unfounded. His injury, then, must have arisen, if he has sustained any, from that report; we must confine ourselves strictly to the report, and if the balance of testimony be in my favour, beyond all question I am entitled to your verdict. Now, Gentlemen, ask yourselves—deliberately ask yourselves, if it can be possible that that report is incorrect, when only one individual out of two hundred spectators of the operation comes forward to deny its accuracy? And I beg of you to remember the manner in which its accuracy was denied even by that one witness, at first indeed denied, but subsequently he did not deny its accuracy in any one material part. Mr. Callaway admitted that the knives had been used, that the gorget had been used,—I believe even a blunt gorget, Mr. Callaway admitted had been used.

Lord Chief Justice—He said he thought it was not; he did not think it was; he did not know, but he believed it was not.

Mr. Wakley—Very well, he believed it was not; all the staves, and sounds, and forceps, mentioned in the report, were used. He would not swear the operation did not last an hour, but he believed it lasted about fifty minutes. The preparation, Gentlemen, of the parts taken from the unfortunate man's body has been produced in court. I have not, certainly, had a fair opportunity of inspecting it, but as far as I could judge, there was not in any part of that preparation, either of the bladder or of the passage leading to it, the slightest reason why any delay should have taken place in the extraction of the stone. It is true, Sir Astley Cooper has come forward, and very properly come forward, to speak on behalf of his nephew! and Sir A. Cooper has told you, the stone was lodged within the folds of the bladder, which is a common thing, and that in this situation, his nephew was incapable of extracting it. Sir A.

Cooper, at the same time considers, and all the other hospital surgeons consider, for it is an interested question with them all,—they all consider Mr. Bransby Cooper to be a skilful man, yet while performing the operation, while he had his finger at the prostate gland, while he had his forceps in the bladder, while he had his sound in the bladder,---this skilful operator was incapable of describing why he could not extract the stone, and he made that statement in the presence of his miserable patient! Do you believe, Gentlemen, that an operator could have been in a state of self-possession who declared, in the presence and in the hearing of him into whose body he was plunging his instruments, that he could not describe the cause of difficulty—that he could not ascertain the cause of difficulty: the patient himself, at the same time, imploring to be loosened? Yet, in opposition to the patient's cries; in opposition to his repeated entreaties to be unbound—still the operator kept him upon the table, and pertinaciously persisted in his attempt to extract the stone, although, from his own statement, he had no probable chance of extracting it, even in a week or a month—not knowing where the difficulty existed, not knowing what part, if any, was malformed; he *could not* feel it with the forceps, although he could feel it with the sound through the urethra, and even when introduced through the wound in the perineum. This, Gentlemen, brings me, for a moment, to speak of what, and you have heard much of it to-day, of what my conduct must have been to have published a report of this description, when I entertained no enmity towards the operator, and no attempt whatever has been made to show that I do entertain the slightest enmity towards Mr. Bransby Cooper. God knows that I do not, for I believe a more deserving, a more worthy man in social life does not exist than Bransby Cooper; but I am not here dealing with him in that character, I am treating him as a public functionary: it is in that character I attack him, and I do attack him as an incompetent surgeon of Guy's Hospital. Well, we have heard much of the reputation—of the reputation of Mr. Bransby Cooper, but I think the learned counsel must have forgotten the satire of Iago, "reputation is oft got without merit;" there are some additional words, to be sure,—"and lost without deserving"—but in this case there was none to lose. (*Laughter.*) Gentlemen, I know not that he had ever acquired reputation as a surgeon. I never heard of it; and it has been my painful duty in "The Lancet," again and again to complain of Mr. B. Cooper as a surgeon of Guy's Hospital, although on one occasion it was stated, at least the fact was stated, that he had performed the operation of tying the subclavian artery in a masterly manner, and it gave me the greatest possible pleasure to communicate that fact to the public. While too, so much has been said about the reputation of Mr. Bransby Cooper, let me ask you what you have heard respecting the miseries of the individual on whom the operation was performed? Not one word has escaped the lips of the counsel on that subject, not one word from the mouth of either of his witnesses. No, Gentlemen, they are, for the greater part, hospital surgeons themselves; and they know, too well, what the practices in our hospitals are, and the sufferings the wretched

patients are in the habit of enduring at their hands, to feel for this man, or for any other man placed in a similar situation! Gentlemen, I should like to know upon what principle it was that the man was kept bound upon the table when he implored to be loosened. Was he not a free agent? He knew what the sufferings arising from the stone were, and he had but a too horrid experience of what the sufferings arising from the operation were. Thus experienced, he was anxious to choose the lesser evil; he said "Let me go—for God's sake, let me go!—I implore you let me go—I pray you let me go; do desist—let it keep in." "No, no, (says the operator,) I shall not let it keep in. I must remove the stone—my reputation is concerned. You were brought here to have the stone extracted, extracted it shall be, and it must be, if you die upon the table!" Gentlemen, will you, by your verdict, sanction such things as these? Will you, by your verdict this day, approve of the conduct that has been attempted to be justified in this case? And, in a word, I say, lay your hands upon your hearts, and ask yourselves, after the evidence you have heard in that box from my witnesses, their uncontradicted evidence—put your hands on your hearts and ask yourselves, if you were afflicted with the stone, would you apply to Bransby Cooper to cut you? If you would not, then upon what principle is it you can send this man back to Guy's Hospital to mutilate your fellow-creatures? Ask that question of yourselves, and if *you* would not have him as an operator, if you were afflicted with this disease, you are bound upon every Christian principle to return such a verdict as not only shall acquit me of having published this report falsely and maliciously, but, at the same time, shall have the effect of preventing Mr. Bransby Cooper from committing similar injuries upon any of his fellow-creatures in that institution. How can you return a verdict against me upon the ground that I have published this report knowing it to be false, when you have heard, from uncontradicted testimony, that I was assured by the writer the report was true before I would insert it? I was not assured of that fact from that individual alone, I was assured of it by others, although those individuals have not been placed in the witness-box, and therefore you can only regard that as a declaration from me, and not as evidence. But the reporter has come forward, and stated openly and boldly, that he assured me the report was true. Gentlemen, attacks have been made upon the reporter, and why? Because it seems he is a reporter—he works for hire! I am sure the Learned Gentleman, at the moment he made that charge, had forgotten himself. He must have been beside himself at the moment; but I shall say no more of this now. That individual assured me that the report was true before I published it; he has stated to you that he assured me, before it was published, that it was true. Gentlemen, have any other persons come forward to substantiate that report? Yes; and who are those persons? Mr. Alderman Partridge, of Colchester, a surgeon of the greatest reputation in the neighbourhood where he resides, and what was the testimony of that witness? That great violence was used in the operation—that he considers the operator a most unskilful surgeon. Mr. Callaway has come forward, on

the other side, who is connected with the hospital, was the apprentice of Sir Astley Cooper, is the assistant surgeon of the institution, and looks higher. Gentlemen, Mr. Callaway looks to the office of surgeon. I merely heard that Mr. Partridge was an honourable man, and that he was present at the operation, and I put him into the witness-box that you might know the truth of the case, without asking him a single question; not one question, before he went into the box, did I put to him. There is another witness whom I shall speak of here—Mr. Lee, the potato-merchant. (*Laughter.*) I heard he was present at the operation, an honest man, and that he was a friend to Mr. Bransby Cooper, under the highest obligations to the Cooper family, and that he had a son walking gratuitously in Guy's Hospital at the present moment; without asking him a single question, I put him into the box, as I was most anxious you should hear all the evidence that could be adduced, and adduced too, from unsuspected and untainted quarters. Gentlemen, that I should have met at different places with a view to persuade witnesses either one way or the other—I reject the insinuation with disdain. No such thing has been done by me. I have acted openly from the commencement; I have not acted covertly in any one respect regarding this case, and if a justification of my conduct be wanting, look—only look to the absence of all the spectators of the operation on behalf of the plaintiff, save the assistant surgeon of Guy's Hospital! Why, Gentlemen, if you are so blind, so deceived, and so duped, as to imagine that this operation was performed in a skilful manner, when only one out of two hundred spectators comes forward to attest that the report is untrue, I know not how to characterize your blindness, nor the obliquity of your judgment. Gentlemen, when I published this report, I published it advisedly; I thought before I did it, and I deliberated while it was printing. I was certain, and I told the reporter so, that if published, Mr. Bransby Cooper must either leave Guy's Hospital at once, or institute an action against me. Gentlemen, in either case I was satisfied that the public would be gainers. From the publicity which the proceedings of yesterday and those of this day will receive, persons who subscribe to our eleemosynary institutions, will have an opportunity of knowing the manner in which the funds they give for the benefit of their distressed fellow-creatures are applied, and to what purposes they are appropriated. I know that all must be gainers by it. I have never feared to publish the truth. I was satisfied that if Mr. Bransby Cooper could prove that the report was false, that he would benefit by the publication. I knew that I could not be injured, because I was satisfied that what I was doing was correct, and I do not believe that any man, ultimately, ever experiences an injury from doing that which he conceives to be right. If I had not believed the report to be true, nothing on earth could have induced me to publish it; no consideration in the world could have induced me to publish a statement that might be injurious to Mr. Bransby Cooper, or to any other man, unless I had the most substantial reasons for believing that that which I was communicating to the public was founded in truth. Gentlemen, the evidence now before you shows that I was justified

in my conduct, and that I had solid grounds for believing the report was true. The absence of one hundred and ninety-nine out of two hundred witnesses must, I should suppose, convince you of the same thing. Who is Mr. Bransby Cooper's witness to prove that the report is false? And yet that individual failed to falsify it. He felt, at first, inclined to give his testimony in an honourable manner, but seeing that his situation was unpleasant, he said all that he could for Mr. Cooper, but, that *little all* was nothing. (*Laughter.*) Who were my witnesses? not men whom I had trained and lectured on models and sketches, and drawings. Has it been proved to you that I was closeted with any person or persons? Mr. Pearl, indeed, stated that I had shown good reasons for believing that an opening had been made between the bladder and rectum; but what passed at that time was merely in the course of conversation, and could not have been with a view to this cause; and why not? Because, in my report there is nothing whatever said of an *opening* between the bladder and rectum; it is said that the cellular membrane there was easily *lacerable.* Why—*easily lacerable,* does not that imply that the membrane yielded before the touch, and that there was not an opening? Why should I use the words easily lacerable—why should I use the term cellular membrane was "easily lacerable" where there was no cellular membrane? If there had been merely a cavity, I should have said *a hole*—that there was a hole between the bladder and the rectum Gentlemen, you have been told that the gorget was introduced after the knife had been introduced twice, and that although the gorget was introduced, upon an *examination* of the preparation, there was no gorget-cut to be detected. You heard from all the witnesses that the gorget was introduced horizontally—you heard from all the witnesses that the cut of the knife was made obliquely—one incision, therefore, must have intersected the other, if the gorget had entered the bladder. That the knife had penetrated the bladder there can be no doubt, whether at first or last I don't know, but what evidence have you that the gorget penetrated the bladder? If it did not, where did it go? Remember this, the gorget is not as thick as the finger, and that it is not an uncommon thing for an unskilful operator to drive the gorget between the bladder and the rectum. Mr. Key himself—and you saw how guarded he was, how exceedingly guarded he was, and how very frequent the twitches of his facial nerves were at the moment he was giving his evidence (*loud laughter*)—he admitted that if the incision with the knife had been properly made, and the gorget had been properly introduced, the incision of the gorget must have intersected the wound in the prostate formed with the knife, which is most evident, and yet nothing has been said of that: again, though this stone was shelved, was in a cavity, shelved up, turned and twisted, so that it walked off from the operator (and who can wonder, poked as it was), yet in the end it was extracted with the *straight* forceps. Gentlemen, I beg you to consider this question deliberately! I am appealing to a jury of surgeons —this is a surgical question. For God's sake do not decide hastily—do not decide against Mr. Bransby Cooper, if you think he has acted properly. I care

not for the consequences. I would rather die in a dungeon than wilfully injure any man; but I would rather expire in a ditch than I would refuse to publish the truth. I have published the truth, and I shall publish the truth, come when it may. Mr. Bransby Cooper says he could not describe the situation of the stone when the bladder was contracted. Gentlemen, the bladder has but one fixed point—it is fixed by an unyielding ligament to the pubes, and this is the position of the pubes when the operation is performed. [*Mr. W. showed the position with the pelvis of a skeleton on the table before him.*] You have heard a good deal, in the progress of the cause, of the tuberosity of the ischium; these are the parts, and when the operation is performed, an incision is made from below the scrotum to between the anus and tuberosity of the ischium on the left side. Why, you have been told that this stone was shelved above the pubes, and behind the pubes; but, Gentlemen, this is the position of the patient, [*adapting the position of the pelvis,*] and a stone in a contracted bladder cannot be lodged above the pubes, because the pubes happen to be above the bladder, and the stone is lodged below; a tendon proceeds from this part of the pubes, and no force, not all the force, or all the strength of the body, could drive a stone beyond this part. Had there been a shelf here, had there been a crooked passage, had there been a cavity, or any place for the deposition of the stone, do you suppose that shelf would not have been produced? Had there been anything particular in the formation of the pubes, would they not have cut out the man's bone as well as his bladder? No, Gentlemen, the bone is not produced, but the bladder is produced, and produced in a bottle of dirty spirits. I tried last evening to see that bladder, but I could not. I had no opportunity of seeing it. I never saw it till this morning, and even then I did not see it properly. They did not like to expose that bladder—why not? Because to surgeons there is in it indisputable proof that Bransby Cooper did not perform the operation as he ought. Mr. Callaway knew it—Mr. Key knew it. Mr. Key admitted that if a gorget had been introduced, as stated, in a horizontal position, it must have intersected the first incision. You heard all the witnesses yesterday state, that after an attempt was made to introduce the forceps, the knife and gorget were introduced after the forceps were used, and yet, I am ashamed, I really am ashamed, I have not language to express my shame relative to these gentlemen, these hospital surgeons, who have come forward to state that this operation was performed in a scientific manner! It is impossible, it is utterly impossible, that I, or that any other man who knows how the operation should be performed—it is impossible that I, or any other man who knows how the operation should be performed, can express what we must feel relative to these surgeons! But they are interested parties; they have come here in a *gang* to swear down those disinterested spectators whom I have brought forward; they have come here to swear down, and outweigh, by the influence of their names, and not by their talents—because talents are not always accompanied with great names, neither are great names always ac-

companied with great talents—they have come here to swear down and outweigh the testimony of persons perfectly disinterested—persons perfectly disinterested either as regards Mr. Bransby Cooper or myself; they care not one straw for me, neither do they care one straw for Mr. Bransby Cooper. I dare say I may never see them again; they have been in the box and spoken honestly, with the exception of Lee only, while a whole gang of hospital surgeons have come forward, on the other side, who are daily committing the same bungling operations that Mr. Bransby Cooper performed, ay, most bunglingly performed. Gentlemen, you may be aware, from the state of the avenues leading into this court, that this trial has excited the most intense interest in the public mind. I entreat you, therefore, to consider well your verdict. Weigh well the consequences. I care not for the consequences. If you are satisfied of the manner in which this operation was performed, and think he performed it as it ought to have been performed, give him your verdict. I would with my family give up every thing—I would give up "The Lancet"—I would give up all, and expire on this spot, rather than injure Bransby Cooper, or any other man under the sun; but if you are satisfied that the operation was not performed as it ought to have been—that if it had been performed properly, the man might have been still living, and a comfort to his wife, and a blessing to his now helpless children, then give such a verdict as will satisfy the poor, as will show the public that men are not to go into offices of this sort where the poor are thus killed, and that hospital surgeons shall not be at liberty to "wade and ride through blood up to their necks" to eminence in their profession, like great generals.—Ah! Gentlemen, return a verdict which shall satisfy the poor, which shall degrade for ever—cast eternal disgrace on those hospital surgeons who have had the hardihood to come forward here to-day, and swear that the operation was performed as it ought to have been, and that they would themselves have operated in a similar way. I have done, Gentlemen.

At the conclusion of this address, there was loud applause from various parts of the Court.

THE CHARGE.

[As we have already inserted the evidence *verbatim*, in giving the Learned Judge's address to the Jury, we shall, for the sake of brevity, omit stating again those parts of the evidence of the different witnesses his Lordship read from his notes, not omitting, however, a single remark upon the evidence that fell from the Court.]

Lord TENTERDEN.—Gentlemen of the Jury,—This is an action brought by Mr. Bransby Cooper for what he considers a libel on his character, on his character particularly as a surgeon to Guy's Hospital, and upon this you are to decide. The publication of which Mr. Bransby Cooper complains, I think they ought to read to you, as they have not been very distinctly, as yet, brought to your notice. The first was published in the month of April in the present year—no, in the month of March, and in about the first week, or a little more,

of April. [*Lord Tenterden read the alleged libel from Number 239 of "The Lancet," down to "a small quantity of fluid followed the withdrawal of the knife."*] Now, I think it's impossible to read this without seeing, and such appears to be the opinion of one of the witnesses, Mr. Partridge, on behalf of the defendant, that this was intended to convey to the minds of the readers that the point of the knife was not fixed in the staff, and that it was carried onwards somewhere, but not into the bladder. Mr. Partridge says he supposes it must have passed into the bladder. [*His Lordship resumed reading the alleged libel, and continued it down to—"O, let it go! pray, let it keep in! was the constant cry of the poor man."*] A great deal has been said to you by the defendant in his reply, as to the sufferings of this unfortunate man, and that he ought to have been released when he requested to be so. I believe it very frequently happens that when a patient has to undergo any protracted operation, accompanied with very great pain, unless he happens to be a person of very great nerve indeed, he will beg to be released from the pain he is undergoing, but it is the duty of the operator not to yield to that so long as he has any hope—any reasonable hope that by continuing the operation he can produce the effect which will be the best for the patient. The operator ought not, for the expression that may be produced in the moment of agony, which occasions the cry, cease the operation, so long as he entertains that reasonable hope. [*His Lordship concluded the Report by reading down to the end of it.*] It is said, indeed they all say, the operator gave no explanation at all. Mr. Callaway says, "the patient was immediately unbound, and put to bed." Well, Gentlemen, it's impossible to read this, without feeling as some of the witnesses expressed, and as one of them called for the defendant, namely, Mr. Alexander Lee, said, that this report is certainly drawn up in a very unprofessional way. To represent this in different acts, like a tragedy, is what no person who wrote with a just sense of feeling and propriety, and with a just sense of what was due to the person against whom these animadversions were directed, would do. The next is in the following number of the work. [*His Lordship read from, "Our report of the operation of lithotomy at Guy's Hospital," down to, "and also in 'The Morning Herald.'"*] Then it goes on to speak of some of the young gentlemen having published something in contradiction to that. "Of Mr. Bransby Cooper's amenity of manners, and kindness of disposition, we entertain no doubt; and the letter in question may be regarded as a testimonial of the estimation in which a good-natured lecturer is held by the young gentlemen who attend his class. But the question is not, whether Mr. Bransby Cooper is popular among his pupils, but whether he performed the late operation with that degree of skill, which the public have a right to expect from a surgeon of Guy's Hospital; whether, in short, the case presented such difficulties as no degree of skill could have surmounted in less time, or with less disastrous consequences; or whether the unfortunate patient lost his life, not because his case was really one of extraordinary difficulty, but because it was the turn of a surgeon to operate, who is indebted for his elevation to the influence of a corrupt system, and who, whatever may be his private virtues, would never have been placed in a situation of such deep responsibility as that which he now occupies, had he not been the nephew of Sir A. Cooper." The defendant here states, that this is the question between Mr. Bransby Cooper and the public, and that appears to me also to be the question, and the material question, in the cause:—whether the operation was performed in a very unscientific, and in a very improper way, and in such a manner as to show that Mr. Bransby Cooper is unfit to fill the situation he holds? That seems to be the real question, and the question on which you must give your verdict. Then he

goes on to say, "This is the question, the only question, in which the public are interested; and if Mr. Bransby Cooper is desirous of bringing this question to an issue in a court of justice, it will be for Mr. Harrison, the treasurer of Guy's Hospital, to enlighten the minds of the jury as to the circumstances under which the nephew of Sir Astley Cooper was elevated to his present situation. In the event of an action, we shall most unquestionably call upon Mr. Harrison to *disclose* those circumstances to the jury. In the mean time, we do not anticipate the decision of this question by positively impugning Mr. Bransby Cooper's skill; but we contend, as we have repeatedly contended on former occasions, that the inevitable tendency of making the patronage of hospital surgeoncies an affair of family influence, jobbing, and intrigue, is to occasion a cruel and wanton augmentation of human suffering, and to render frequent such heart-rending spectacles as that which was lately exhibited at Guy's Hospital." I believe I have now read all that is set forth in the declaration. I am not, however, sure whether I have or not. Well, Gentlemen, as to what is here said with regard to the appointment of Mr. Bransby Cooper, that it was mere matter of jobbing, intrigue, and so on, it is in no other way material,—the conduct of the governors of the hospital is in no otherwise material than that it may show in one way or the other, or lead to a conclusion one way or the other, with regard to the competency of the skill and fitness of Mr. Bransby Cooper to fill the office of surgeon to Guy's Hospital; for, supposing that the governors of the hospital, instead of electing, as Mr. Harrison says they have done, surgeons from among themselves, who have been brought up there, and not as the defendant says, choose to make this a public examination—and I am far from insinuating that a public examination of candidates, and public polling of candidates for those situations, which I know to take place in some places, (for I have myself been applied to for my assistance in that way,) is likely to obtain a person better qualified for the situation, than a private election, I don't mean to say any thing one way or another upon that, for it does not belong to the case at all. However, seeing the manner in which Mr. Bransby Cooper was elected, I may as well conclude what I have to say upon this part of the case. Mr. Harrison says, "thinking it expedient to establish a school of surgery and anatomy there, which the hospital had not before, they thought it right to make an alteration in the establishment; and Sir Astley Cooper being the surgeon there, it was proposed to him that he should be appointed consulting surgeon, that Mr. Bransby Cooper should be the surgeon, and that Mr. Callaway should be the assistant surgeon." That this does not proceed from Sir Astley Cooper, as he himself, as well as Mr. Harrison, tells you, but from the governors acting from what they considered best fitted for the advantage of the institution, namely, to have it improved as a school.—Therefore, as for any imputation that this situation was obtained for Mr. Bransby Cooper through Sir Astley Cooper's influence, or by his canvassing for it, appears to be negatived by the witnesses for the defendant himself, and indeed by the witnesses on both sides. Now I shall come to the issue, and strip the case, as the defendant did, in his statement to you—come to the issue upon two or three of these pleadings, which the defendant has taken upon himself to prove the truth of: "The said plaintiff performed the said operation of lithotomy in the said second plea mentioned, and therein occupied a long space of time, to wit, the space of fifty minutes, being a much longer time than was necessary, or proper, or than a skilful surgeon would have occupied in that behalf, and that the said plaintiff then and there performed the said operation in an unskilful and unsurgeon-like manner, and did then and there, by such unskilfulness, cause the said patient a much greater degree of pain and suffering than he would otherwise and but for

that cause have incurred, and that it was, and is doubtful, and questionable, whether or not the death of the said patient was caused by such unskilfulness as aforesaid, and whether, if due and proper skill had been used in the said operation, the life of the said patient would not have been saved." Therefore, the question is, was this operation, or was it not, performed by Mr. Bransby Cooper, in a skilful and proper manner? The defendant is to prove that it was not performed in a skilful and proper manner; and, notwithstanding the form and manner in which the first publication is couched and written, upon which I have already made some observations, and although it appears now in the evidence before you, that that first publication was tendered to the defendant by a person who had received, according to his own account, some reason for dissatisfaction with the plaintiff, I shall not carry it further. He will not say he did not declare he would watch for an opportunity to have his revenge upon him. Though it has proceeded from such a person, and in such a form, yet if the defendant has made it appear to your satisfaction, that the operation was performed in an unskilful and improper manner, I think you ought to find your verdict for him; if not, then you ought to find your verdict for the plaintiff. Now, Gentlemen, the course of this cause called upon the defendant to begin to make out his case, that the operation was unskilfully and improperly performed. Now, the operation is agreed on all hands, to be one of the most difficult nature. Mr. Lee said, that in all countries, even now, surgeons were hardly agreed upon the operation; that it is a difficult operation, and, according to some of the witnesses called for the plaintiff, one of them of the first eminence, whether they are, or may now be hospital surgeons or not, certainly they all agree that the length of time furnishes no criterion whatever as to the skill, or want of skill, of the operator. That there may be many circumstances which the operator cannot foresee and cannot explain, and which may cause great delay. If the dexterity of the operator is to be considered as an important circumstance of itself, it is in evidence that Mr. Bransby Cooper performed this operation, on one occasion, in less than two minutes. They all agree in saying, it is a very difficult operation; they all agree that circumstances may arise, which it is impossible for them to foresee. Mr. Partridge, one of the witnesses called on behalf of the defendant, has said this: "The impression on my mind is, that the stone was lodged above the pubes. I cannot say it was, but the impression on my mind is, that it was. It was at last extracted by the use of the curved forceps." In that he must be mistaken, for they all agree that they were the straight forceps. [*His Lordship read over a part of the testimony of this witness.*] Mr. Callaway's testimony as to the situation of the stone, is very much to the same effect. Mr. Partridge apprehended it was above the pubes, and so Mr. Callaway has said it was, though the defendant says, that that cannot be. Mr. Callaway says, in the course of his examination, "Nobody can say how it was, but it does sometimes happen, and may have happened in the present case, that when the bladder is nearly emptied of urine, the coats of the bladder will contract, and by their contraction will, for a certain length of time, hold the stone in a particular situation, so that, though you may be able to touch it with the forceps, you shall not be able to lay hold of it and withdraw it, till after the patient shall have been so far exhausted as that the contractions of the bladder shall have, in some degree, ceased, leaving the stone, in some degree, more accessible than it was." Now, the witnesses who have been called by, and on behalf of the defendant, is, in the first place, Mr. Partridge, a gentleman practising at Colchester, and, perhaps, with some success, and who is a man certainly with some degree of intelligence; but in his evidence he negatives the statement,

that the knife did not penetrate into the bladder. He says, "I have no doubt that the knife entered the bladder; I am convinced that the knife found its way into the groove of the staff, and thence into the bladder." [*His Lordship read from his notes a portion of the testimony.*] He said in his examination in chief, that the plaintiff introduced his finger with some force, but it did not strike me as being very violent. He says, "I thought there was a small opening made into the bladder, for a small quantity of water and blood issued," and, I think, two other witnesses stated that urine did issue; that seemed to be agreed by all, and therefore the knife must have entered the bladder in some way or other. Then this gentleman goes on to state, that a great length of time was occupied in the operation, and the conclusion he draws from the whole is, that the operation was not performed with the skill which a surgeon ought to have, who fills the situation of surgeon to Guy's Hospital. That's what he thinks; whether it is a right conclusion or not, I don't know. Other persons have said, it is very difficult to draw a conclusion without consulting the operator. It is mentioned also, by that witness, on behalf of the defendant, that there have been very long operations, that there have been some much longer than the present, and that the operations have been continued longer by reason of the difficulty of catching, if I may use the phrase, the stone, in consequence of its being somewhere retained by the contractile force of the bladder. Then the next witness called was Mr. Clapham, upon whose testimony the defendant thinks you ought to place no reliance; and perhaps I had also as well say nothing further of him. The next witness is Mr. Joachim Gilbert, an assistant to Mr. Phelps, who married the defendant's sister. Then he says, after staying thirty-five minutes, he had to withdraw; he could bear to see the operation no longer. He says, he used the instruments in the accustomed manner of other operators, but others do not use great and unnecessary violence, and he represents that the plaintiff did. He says, "After the second incision, I cannot say where he carried the knife, I should consider that he held his arm too high." He says, "there was a flow of blood." [*His Lordship read a portion of the testimony.*] There is some confusion respecting the first and second incisions of which the witnesses have spoken. [*His Lordship read a further portion of his notes.*] Now you are to judge whether this is not a description much too highly coloured to correspond with the other. He has never himself performed the operation. He says, he has seen the operator perform other operations, and he goes on to the operation of tying the subclavian artery, and thinks that a very ignorant man may, by accident, tie it up. Now what's the weight of a man's testimony, who would say this, I leave you to judge. The next witness is Mr. Thomas, a demonstrator at some other school. He says, "To speak from impression, I think I never saw an operation performed so unscientifically and so bunglingly;" and he gives some account of Mr. Sleigh's school, (but which I don't trouble you with,) for the purpose of showing how the defendant found him out. He knows nothing of the defendant: he does not know what Sir Astley Cooper's knife is. The next witness is Mr. Pearl, who was present at Mr. Grainger's, and who was at Mr. Lambert's, when certainly some pains were taken that might have led him to believe there had been a want of skill; pains, to make him suppose there had been such want of skill at the time that the instrument was made to pass along between the rectum and the bladder, and he gives a long account of it. He says there was no gush of urine as is ordinary; there was no gush at all. [*His Lordship read a portion of the evidence from his notes.*] Now, upon that it appears, I think, by the evidence of the witnesses called by the plaintiff that the scoop is used sometimes with a view of

getting out the stone, and, perhaps, of either moving it, or getting it into the scoop, or drawing it into a proper situation for the forceps. It appears in this case, the stone was not a large one; but some of the witnesses say, the larger the stone is, the easier it is to get hold of it, though, perhaps, not the easier to draw it out. [*His Lordship read a further part of the testimony.*] Now, the witnesses on behalf of the plaintiff say, that when the gorget is introduced, it is an instrument so peculiarly made, that when an opening is first made with a knife of a certain definite size, the gorget cannot possibly enlarge it, therefore, though the gorget might have been used, yet, if the knife had made a sufficient aperture, an aperture corresponding with the size of the gorget, though it had been introduced, it would make no alteration. According to this witness's own account, when he saw this operation, he was a very young and very inexperienced man. He says, I am not competent to state, whether the forceps passed into the bladder, or between the bladder and the rectum, and that 's in speaking of Lambert's having his hand in that part after it was separated from the body. I shall just mention, very shortly, what the medical men, who took those parts out of the body, say on that.

Then the next witness is Mr. James Lambert. Now, he is the author of the report; he must, therefore, come into this court with a strong desire to establish the report, more especially as he tells you he pledged his word and honour to the defendant that it was true. Some reliance was placed on this. Mr. Lambert says it was true; but if the defendant has even, unawares, lent himself to give publication to that which is untrue, relying on the author of that which might be furnished from a very improper motive;—if the defendant has given circulation to that, he must answer in his own person for the errors into which he has been led by others. The only use I make of Mr. Lambert's evidence is, that part in which he speaks of the parts after death, and in which he says he did not thrust his fingers with any degree of force into them, but from the appearance, he conceived some instrument had passed between the bladder and rectum.

The next witness is Mr. Alexander Lee, who is a person advanced in life. His education does not appear to have been the most regular, but yet he may be a person of considerable skill. He thinks the bladder contracted when the urine escaped. [*His Lordship read a part of his evidence.*]

The next witness is Mr. Thomas Bolton, who says the report is generally correct. [*His Lordship read part of his evidence.*]

The next witness was Mr. Harrison, who is called to prove that the election of Mr. Bransby Cooper was a job, and his situation procured under the influence of Sir Astley Cooper, and who says there is no pretension for saying so. That being the evidence of the defendant, it becomes my duty to go to the evidence of the plaintiff, but it will not be necessary for me to go so fully into it as I have done into the defendant's, because being given this day, perhaps it will be fresher in your minds. Now, Mr. Callaway is the first witness, and the person who held the staff. Now, great complaint is made, because the plaintiff has called no other person who was present at the operation. I don't know who else he could have called, except his own pupils, and you will say whether this is a case in which he ought to have called his own pupils forward as witnesses, to speak to the operation, and whether persons so young and inexperienced, are the proper persons to give an opinion. He says that he considers the plaintiff a person of skill. He says the plaintiff was a rival of his. He considers that the stone was situated above the pubes, in the situation Mr. Partridge thought it was, and states, that by pressure, it came from that situation. He gives his account of it, and he represents the operation to have been per-

formed on this occasion by Mr. Bransby Cooper, with as much skill as could be expected in performing such an operation, and speaks of him as a person of great skill, accuracy of judgment and discernment. I don't know whether he saw the parts after death. At present, he thinks no judgment or opinion can be formed from the inspection of the parts in the state in which they are now. O yes, he did see them after death. I think he says the whole of the cellular membrane was easily lacerated, and which is usually the case where the operation has been fatal. He says, my attention was particularly directed to that. [*His Lordship read part of the evidence.*] Then, Mr. Key, who was the next witness, is the senior surgeon at Guy's Hospital. He did not see the operation. [*His Lordship read a part of his testimony.*] He says that if any violence had been used, it would have been apparent after death—you will recollect that some of the defendant's witnesses spoke of great violence having been used. [*His Lordship read a further part of his testimony.*] The next witness was Mr. Laundy, who handed the instruments, and I do not think any thing turns upon that. He says that which is most likely, that the operator is the best judge of the instruments he will use. The next witness is Dr. Hodgkin, the professor of anatomy at the hospital. [*His Lordship read part of his testimony.*] Then Mr. Brodie, a surgeon of eminence, says, from the account Mr. Callaway gave of the operation, it was an operation of considerable difficulty. [*His Lordship read part of his testimony.*] He belongs to St. George's Hospital. He recollects attending some meeting at the Freemasons' Tavern. And it seems that some of the gentlemen, who are lecturers, thought themselves aggrieved by the publication of their lectures, and they made common cause of it, and endeavoured to prevent it. The defendant says, the result of that was in the Court of Chancery, that he was allowed to go on publishing them. Now, it is not at all material to the present question, whether they were right or wrong upon that question, one way or the other—it is not at all material with respect to what we are now to inquire into, which is the present report, always remembering that the case is, that this operation was performed in an unskilful and unscientific manner. Mr. Travers says he is a surgeon of long standing. [*His Lordship read part of his testimony.*] I don't feel the materiality of the statement of the distance between the os ischium and the pubes. He says, that if any considerable violence had been used in the introduction of the forceps, it would have been seen afterwards. He says he has performed two operations in cases where there was no stone extracted, though he is convinced there were stones. He says, in the third operation, a small stone escaped. He says he has seen the plaintiff perform several operations, he has seen him tie the subclavian artery, and he thinks that the most difficult operation. He says, I have been long in operating myself, and I think no man can judge of the time except the operator. Mr. Green, who is the surgeon at St. Thomas's, is the nephew of Mr. Cline. [*His Lordship read part of his testimony.*] Dr. Babington is called, who says, that he knows the plaintiff by his attendance at the hospital. [*His Lordship read part of his testimony.*] Dr. Roget, who is a physician in London, says, he has paid particular attention to anatomy, and that he has often met the plaintiff in mixed medical and surgical cases. [*His Lordship read part of his testimony.*] Then Mr. Morgan, who is a surgeon at Guy's Hospital, is called, and says, that he has often seen him operate. He has known him about nine years, and has a high respect for his abilities. Mr. Hilton was a pupil at Guy's, and is now demonstrator there. And he says, that while Dr. Hodgkin was preparing to examine the body, I passed my finger into the perineum, and could not feel the bladder. He thinks that he reached the prostate. That

is the opinion only of a very young man. Then Sir Astley Cooper is called, and he knows better the course of the education of the plaintiff than any other. He says, he had been in his house for a great length of time, that he had been at the Norwich Hospital, then, that he had studied two years at Guy's, was present at many of the last battles, where probably he had an opportunity of seeing many who had been severely wounded. Then he went to America, then went to Edinburgh, and then he bound him to himself; and his opinion is of the plaintiff, that he is a good surgeon, and good anatomist. [*His Lordship read part of his evidence.*] To be sure, if nobody was to be employed as a surgeon, either in hospitals or private practice, till a man had seen a great deal of practice, you would never employ one at all. [*His Lordship read a further portion of his testimony.*] Then Mr. Dalrymple, who is the senior surgeon at the Norwich Hospital, is called. I think I recollect to have heard something quite unconnected with this case, that next to the hospitals of London, that hospital has the most lithotomy cases. [*His Lordship read part of his evidence.*] Then Mr. Watson, secretary to the Examiners of the Company of Apothecaries, is a person called in to prove, that Mr. Clapham, whose evidence the defendant very properly gave up, that that young man, most unfortunately for himself, made a very great misrepresentation of his age, by which he got his license. Now, Gentlemen, this is the substance, and in part the detail of the evidence on the one side and on the other. The question is certainly one of great importance as it affects the public, and as it respects the skill of the plaintiff; for an issue as to the fitness of a medical man to fill the situation he holds, must necessarily be a question to him of very great importance. The defendant has represented the question to be of no importance in itself as regards him; but I cannot think it is not. I think it is important to the defendant himself. In a case like this the jury will weigh over the whole of the evidence; and whether they give a verdict for the plaintiff, or for the defendant, they will well consider what the effect of that verdict must be. Gentlemen, I cannot assist you, I think, in this case, more than I have done. I have already mentioned that the operation is one of great difficulty, of very great difficulty, one in which there has been failure in the hands of great surgeons. The length of time furnishes no criterion at all of the operator's skill, nor does the use of instruments. You will take the whole of the case into your consideration: if you are of opinion the defendant has made out what it was incumbent on him to make out, that the operation was performed unskilfully and unscientifically, and in a manner to render the operator unfit to fill the situation he now holds—if you think he has made out that, whatever may be your opinion of the form of the report—or, whatever may have been the motive which induced Mr. Lambert to send this report to the defendant, the defendant is entitled to your verdict; if, on the other hand, you are not satisfied that he has made out that this operation was unscientifically and unskilfully performed, then you will find your verdict for the plaintiff —and if you find your verdict for the plaintiff, then you will next have to consider what you think you ought to give as your amount of damages. I have already mentioned to you that a charge of this kind against the character of a professional man, greatly circulated, and widely circulated as this has been, is one calculated to do him great and serious injury, and one, therefore, that the jury must think they should say by their verdict that the defendant was wrong in circulating, if untrue; however, I cannot go the length of agreeing with an observation made by the learned counsel that the verdict, on any occasion, should mark indignation—the verdict should mark cool and temperate consideration, but I do not think, on any occasion, it should mark either indig-

nation or angry feelings. Gentlemen, with these observations, I shall leave it in your hands.

At a quarter to 9 o'clock the jury retired.

Mr. *Pollock.* I hope your Lordship will deem this a fit case to certify, whichever way the verdict may be.

Lord *Tenterden.* It 's your special jury, I believe.

Mr. *Pollock.* Yes, my Lord.

Lord Tenterden. I shall certify, certainly, whatever may be the result; it can do no harm.

Mr. *Pollock.* I am desired to intimate, that it is not the wish of either party that your Lordship should remain to take the verdict.

Lord *Tenterden.* I am much obliged to you and the defendant, but I shall remain a little while, as the jury may wish to ask some questions.

In about three-quarters of an hour, the jury sent into court, for a copy of the alleged libels.

Lord *Tenterden.* Here are the two numbers. [*The same were handed to the officer.*]

Officer. Mr. Wakley wishes to see them, my Lord, before they are sent to the jury.

Lord *Tenterden.* By all means. They are the two that were handed to me.

Mr. *Wakley.* I am perfectly satisfied, my Lord.

Mr. *Pollock.* There was the epigram, which was read in evidence.

Mr. *Wakley.* But that is not in the declaration.

Lord *Tenterden.* [*Addressing the defendant.*] It was part of the evidence, and the jury have a right to see it if they wish.

Lord *Tenterden,* when he had remained more than an hour after the jury had retired, left the court.

At twelve minutes before 11 o'clock, the jury came into court; and, after entering their box, and answering to their names, returned a verdict for the plaintiff:—Damages, *One Hundred Pounds.*

The court was crowded to excess until the last moment. "Who will get the verdict? who will get the verdict?" was asked by hundreds. Some thought the plaintiff—others thought the defendant; of the latter, Mr. Cooper's colleagues and friends seemed to form a part, as they were sadly dejected during the whole time that the jury were absent. The BATS, indeed, appeared as though they had taken their last flight to Westminster Hall; they were confused, feeble, and only a few inches above the mire. Sir *James Scarlett* left the court soon after the learned Judge had concluded his charge, with an expression of countenance by no means indicative of that delightful feeling of self-satisfaction and self-esteem for which the learned gentleman has so long been celebrated. Some wag remarked, that the worthy knight, owing to the extreme heat of the court, had taken an unusual quantity of SOUR MILK, a favourite beverage, for a time, with BATS, RATS, and BARRISTERS.

APPENDIX.

No. I.

It must be evident to professional, and, indeed, to non-professional readers, after a careful perusal of the evidence given on this trial, that only two sources of difficulty in extracting the stone were relied upon as accounting for the extraordinary circumstances attending Mr. Bransby Cooper's operation; namely, the situation of the stone with reference to the pubes, and its situation with reference to the folds of the contracted bladder. To these points we shall presently direct the particular attention of the reader; but before doing so, we shall, in justice to ourselves, insert the following Remarks on the speech of Sir James Scarlett, which we published, in No. 277 of "The Lancet," on the next Saturday after the decision of the cause:—

"If," said Sir James Scarlett, in his address to the jury, on Saturday last, "you give moderate damages in this case, you will afford an opportunity of triumph to the Periodical Press, such as it has never yet achieved, and you will hold up the plaintiff to the contempt and scorn of the public!" We do not, for obvious reasons, concur entirely in the sentiments here expressed by the learned Counsel, but we may take his declaration as a measure of the satisfaction with which he, and those for whom he laboured, contemplate the verdict actually returned by the jury. We believe that the learned Counsel never yet had cause to reflect, with so little self-complacency, on the effect produced by his professional exertions. He made a most elaborate, but, as it appeared to us, and we believe to most of his hearers, a singularly infelicitous effort. How it happened, that an advocate of such consummate skill, should have been foiled in an undertaking, wherein it was evident that he considered himself secure of success—how it happened that he was beaten, with every advantage in point of experience on his side, by a mere novice in the field of jurisprudence—how it happened that he sustained so signal a defeat, for, upon his own showing, he *has* sustained a signal defeat, we shall endeavour presently to explain. But, before making any further observations on this subject, we think it right to state distinctly the view which we take of the verdict returned by the jury, both with reference to the interests of the plaintiff, and with reference to the interests of the public. Mr. Bransby Cooper has obtained a verdict, and the jury has awarded him one-twentieth part of the damages which he sought, as a reparation for the alleged injury to his reputation. Of this verdict, as it affects the interests of the plaintiff, we shall merely say, *valeat quantum*. We have no wish to turn against Mr. Bransby Cooper the weapons with which the indiscretion of his Counsel has furnished us, or to apply to his present situation observations which would probably not have fallen from Sir James Scarlett, had that gentleman formed a more judicious estimate of his own powers, and relied less upon the chance of crushing an unpractised opponent by dint of coarse invective, and gratuitous misrepresentation. The intemperance of the advocate received a fit rebuke in the admirable observations of the learned Judge

who tried the cause, and it must be perfectly clear to every impartial man who heard, or has read the trial, and who has attended to Lord Tenterden's charge to the jury, that whatever might be the accuracy or inaccuracy of some of the details of the report, we were legally, but not morally responsible; since we stood completely absolved from that unfounded imputation of malice towards Mr. Bransby Cooper, which the plaintiff's Counsel, however liberally he might have garnished his speech with this charge, had not made the slightest attempt to prove. Neither at this moment, nor at any former period, have we entertained any other feelings towards Mr. Bransby Cooper, as a private man, than those of respect and esteem. How far our opinion of him, as a public operator, may be supported, or may require modification, after the evidence given at the late trial, and after the verdict returned by the jury, the profession and the public will judge. We will endeavour, as far as possible, to avoid making any observations which may add to the difficulties of his present situation, but we will not shrink from the discharge of our public duty, whenever any occasion may arise which may call for an unreserved publication of the TRUTH. Mr. Bransby Cooper must feel that the eyes of the public are upon him; and we trust that this consideration, as well as the remarks made by his uncle in the witness-box, may have the effect of increasing his vigilance, and of exciting or confirming his desire of acquiring a complete knowledge of his profession. "Give him time," said Sir Astley, "do not crush him in the outset of his career, and he has abilities which will eventually enable him to become a good surgeon, and an excellent operator." Three years, be it remembered, have elapsed since Mr. Bransby Cooper was appointed to the office of surgeon at Guy's Hospital, and Sir Astley still asks us *to give him time*, not perceiving that the tenderness which he claims for his nephew, might, under circumstances which we sincerely hope may not arise, become cruelty to the public and to the poor. Sir Astley's avuncular feelings may render him blind to this obvious inference, but it is an inference which thousands of individuals must by this time have drawn from the worthy baronet's admission. For our own parts, we will show as much tenderness to Mr. Bransby Cooper as may consist with the honest and faithful discharge of our duty to the profession and to the public,—and no more. Above all, we will not shrink from pressing on the attention of our readers, those topics connected with public interests to which the evidence elicited at the late trial is calculated to give increased importance; nor will we cease to hold up to public reprobation that corrupt system under which the benevolent intentions of the founders of our public hospitals are perverted and defeated, while the government of those institutions is often virtually usurped by a single individual, and the revenues appropriated to objects foreign to, and inconsistent with, the purposes of charity. As far as we were permitted to enter into the exposure of that corrupt system at the late trial, we expose it; and we consider the admissions of Mr. Harrison, and Sir Astley Cooper, in the witness-box, together with the evidence *extracted* from Mr. Harrison before the Parliamentary Committee on Anatomy, as the first steps towards a reform in the system of government at Guy's Hospital, which must, ere long, be conceded to public opinion. At present, the government of that institution is an absolute despotism: the governors, generally speaking, take a mere nominal part in the management of its affairs, and they have, with a single exception we believe, been nominated by the *fiat* of the treasurer.

There was one feature in the late trial which we think it right to notice, as well from its peculiarity, as from the influence which the decision of Lord Tenterden will probably have on all future actions for libel against the editors of public journals. By a whimsical interchange of professional functions, the first

common lawyer at the bar became, upon this occasion, the expounder of points of surgery, and the editor of a medical journal, having made his election to address the jury in his own behalf, was reduced, by the etiquette of the bar, to the necessity of arguing a point of law. "He who wins may laugh," saith the proverb, and therefore, while we have some reason to congratulate ourselves on the success with which we performed the part of lawyer, for we beat Sir James Scarlett, *on the point of law*, we may also be permitted to laugh at the ludicrous figure which Sir James made in his attempt to enact the character of surgeon. Sir James, indeed, regardless of that legal maxim which gives every man credit for skill in his peculiar calling, threatened, in his speech to the jury, to expose our ignorance of surgery, and we girded ourselves up for the lawyer's attack on our professional knowledge. The threat, however, shared the fate of all the assertions made by the learned Counsel; it flashed in the advocate's speech, but vanished, with a slight smell of sulphur, when he came to the examination of witnesses; it was *vox, sonus, aura, nihil.* On the other hand, we maintained our point of law, not only against Sir James Scarlett, but against the opinion of our own Counsel, and we GAINED IT. As this is a matter which may involve consequences of great importance to the liberty of the Press, and as the point discussed was misunderstood in all the reports of the trial which we have seen in the newspapers, we shall endeavour to make it clear to our readers.

In general, a plaintiff has a right to open his case, and, by consequence, to have the general reply;

> For courts of justice understand
> The plaintiff to be eldest hand;

but there are some exceptions to this rule, as in actions of ejectment and replevin, where the party who is to prove the affirmative of the issue is allowed to begin. In an action of tresspass, *quare clausum fregit*, (*Hodges* v. *Holder*, 3 *Campbell's N. P. Reports*, p. 366,) the defendant admitted *substantially* the entering of the plaintiff's close, but pleaded a right of way. Here the affirmative of the issue being thrown upon the defendant, Mr. Justice Bayley held that he had a right to begin. The same point arose in the case of *Jackson* v. *Hesketh* (2 *Starkie, N. P. C.*, p. 518,) tried at the Lancaster Assizes, 1819, and Mr. Justice Bayley, after having consulted Mr. Baron Wood, decided that the defendant was entitled to begin, and to have the general reply. Again, in an action of assault and battery (*Bedell* v. *Russel, Ryan and Moody's Nisi Prius Reports*, p. 293,) where the defendant pleaded a justification only, without the plea of "not guilty," and the right of beginning was insisted upon by Mr. Sergeant Wilde for the defendant, Chief Justice Best said, "that but for the authorities cited, he should certainly have thought, that the *onus* of proving the damages sustained, gave the plaintiff a right to begin; but that, as it was of the utmost consequence that the practice should be uniform, he should consider himself bound by those cases, until the matter should be settled in full court."

On the authority of these cases we maintained our right to begin, and to have the general reply. Sir James Scarlett, on the other hand, insisted, first, that as the plaintiff had to show the amount of damages sustained, the affirmative was thrown upon him, and he was consequently entitled to begin; secondly, that as our second and fourth pleas contained negative allegations, as that the plaintiff had *not* performed the operation with the skill which the public had a right to expect from a surgeon of Guy's Hospital, &c., the affirmative of the issue was not with the defendant, but with the plaintiff. We replied that, as to

the first point, Mr. Justice Bayley had decided that the question of damages never arose until the issue had been tried; and that, as to the second point, the allegations in our pleas were substantially affirmative allegations; and we expressed a hope, that the practice which had uniformly prevailed at Nisi Prius, in cases where the defendant had justified, would govern the decision of the Court. Lord Tenterden intimated an opinion in our favour; but said, that as this case was likely to become a precedent for all future cases of the same kind and as he had the advantage of being able to consult two of his learned brothers in the adjoining Courts, he should take their opinion. The Lord Chief Justice left the Court, and on his return, stated, that his learned brothers concurred with him in the opinion, that the defendant was entitled to begin, and to have the general reply.

This decision will, we doubt not, lead to most important consequences. It is calculated to strengthen the hands of public writers, and to raise a new bulwark in support of the liberty of the press, by depriving its enemies of the power of casting gratuitous aspersions on public journalists, without being subject to reply and exposure. Hitherto, we believe, it has been the practice of pleaders to discourage pleas of justification, in answer to actions for alleged libel; but, after the precedent established in the late trial, public journalists, against whom actions may be brought for having discharged what they believe to be a public duty, cannot fail to perceive the advantage which they will derive from putting a plea of justification on the record. If they adopt that course, they cannot be borne down by calumny, to which they will have no opportunity of replying; for they will be entitled to open their case, and to have the general reply. Nor is this the only advantage which they will gain by adopting that course; for, under a plea of justification, they will not be legally responsible for the malice of an agent, provided the alleged libel be proved to be strictly, and in all its circumstances, true. If malice, on the part of an agent, be shown or suspected, a jury will, no doubt, be inclined to find, or, if they do not find, to presume, inaccuracy; but still it will be no small advantage to the editors of public journals, who cannot, of course, be cognisant of all the animosities which may subsist between reporters and the parties whose acts are reported, if, by a plea of justification, they may legally exonerate themselves, where the facts are true, from responsibility for the *animus* of an agent, for which they cannot, in reason or equity, be responsible.

We have said that Sir James Scarlett relied somewhat injudiciously on the chance of crushing us by dint of coarse scurrility and gratuitous misrepresentation. We believe that the aspersions which Sir James Scarlett heaped on our character, in support of which the learned Counsel well knew that he had not a tittle of evidence to adduce, were made solely under the impression that we should have been incapable of replying to him, and consequently of demonstrating their falsehood. Notwithstanding the congratulations which have poured in upon us from all quarters, and the success which the kindness of our friends has ascribed to our exertions, we may state most unfeignedly, that we look back with regret to our errors in point of *omission*, errors which are partly attributable to our want of experience, but still more to our state of physical exhaustion. Could we now address an untired jury, free ourselves from the disadvantages under which we then laboured, we feel that, in answering Sir James Scarlett's assertions, we could reduce that learned person to something like his natural intellectual dimensions. We will still endeavour to do this act of justice to ourselves, and to the public, by demonstrating that there was not a single assertion, levelled by this learned person at the character of "The Lancet," which was not utterly false and unfounded, and with respect to which it is not fair

to infer that it was mere gratuitous misrepresentation, inasmuch as the learned person did not attempt to offer a tittle of evidence in support of it. We shall this week confine ourselves to one instance of the learned gentleman's candour and love of truth, premising, that the aspersion to which we are about to allude, is not more base and unfounded than those by which it was succeeded. Sir James Scarlett, feeling that he had no case which he could support by evidence, travelled out of the record in order to raise a prejudice against us in the minds of the jury, and for that purpose, repeated the slander, as to the publication of lectures without the leave of the Lecturers, which, as the readers of this Journal are aware, we answered on the 4th of October last, in a manner which has effectually closed the mouth of all other calumniators, except the learned gentleman. We shall insert the learned Counsel's attack, and reply to it by extracting a portion of the article which appeared in this Journal on the 4th of October.

"'The Lancet,' it should seem, from his own statement, was established for the purpose of publishing Lectures delivered at the hospitals,—in other words, for the purpose of committing plunder on the property of others to assist himself. What! was it to be said, that if Mr. Cline, or Sir Astley Cooper, or any other eminent surgeon, should compile a course of Lectures, and deliver them to the pupils of his own class at the hospital, who paid him for attendance, and remunerated him for those labours, that a periodical paper should rob him of all advantage, and, without his leave and license, make them public, so as to give to all the pupils in the kingdom, who were desirous of studying his art, the advantages which the Lecturer thought he had established for himself;—that he should rob and injure him, and gain ten times more than he did himself acquire, after being at all the labour of compiling his Lectures?—that he should do that which would render it unnecessary for the pupils to attend the Lectures, because all the advantages derivable from their attendance, might be gained by reading the reports of them in 'The Lancet?' Could it be supposed that there were any persons in the honourable profession to which Sir Astley Cooper belonged, who were so base and ungentlemanly as to make use of the privilege which was allowed them of attending these Lectures, for the purpose afterwards of giving them to the world, without the leave of the Lecturer himself? Yes, there were those who were contributors to 'The Lancet,' who were base enough to do this, and who thus enabled the editor (Mr. Wakley) to make his five or six thousand a year, and to gain the reputation of being a 'popular writer!' The defendant had himself avowed that 'The Lancet' was a work founded on the principles of robbery and plunder. He stated that he obtained his communications from pupils at the hospital, and he called them 'men of honour!' men who were induced to betray their trust, and surrender their honour; and who, by making contributions of the Lectures they heard, furnished that to the public which ought never to come out of the walls of the hospital, except by the consent of the Lecturers themselves. But this was not a robbery of property merely; it was a robbery of character and reputation. He (Sir James Scarlett) was glad that he was addressing gentlemen of education, as he only wished that this matter should be judged rightly. He would ask whether, supposing one of them had taken great pains to prepare a course of Lectures, which, by-and-by, he intended to publish himself, could he endure it, if an unfledged pupil, who had been admitted to the hospital, and allowed to take notes for his own instruction, was afterwards to furnish them to a person who meant to commit them to the press, without those revisions and corrections which an author was generally anxious to make in his works, before they were submitted to the public eye? Could any man, and particularly a public Lecturer, suffer such use to be made of his works? Suppose one of the jury trusted to a person the key of his cabinet, which contained written communications, and that he made extracts from them, and sent them for publication in 'The Lancet?' Would they not think that that man was one of the basest of his kind, and would they allow him to enter their doors again? And yet these were the persons who contributed to 'The Lancet;' and these were the means by which the editor, Mr. Wakley, was enabled to roll in his carriage, and laugh at the parties whom he thus robbed and plundered. He (Sir J. Scarlett) was, upon the defendant's own confession, justified in saying that this work 'The Lancet' was a sort of literary raven, which lived by plunder, and shamelessly held up its head by the injury which it inflicted on others."

We now beg the attention of every man who wishes to see a calumniator effectually exposed, to the following passage, which appeared in "The Lancet," of the 4th of October:—

"There is no charge which has been more frequently brought against this publication by those who are interested in upholding existing abuses, and who seek, therefore, to depreciate the character of a Journal which they have long felt as a thorn in their sides, than that we have dishonourably appropriated the labours of medical teachers to our own profit, without the consent of those teachers, and even in spite of their remonstrances against the publication of their Lectures. This charge has been so often, and so confidently made, that we doubt not there are many persons who, however otherwise disposed to think well of this publication, believe that we have not only published Mr. Abernethy's Lectures without his consent, but that in many, or most, of the instances in which courses of Lectures have been published in 'The Lancet,' the consent of the Lecturers has not been obtained. We shall insert the charge in the language of one of our calumniators, and we shall be content to forfeit that influence which has rendered us the object of so much slander and misrepresentation, if the answer we shall give to it, be not such as shall for ever silence our enemies, if they have the smallest regard for decency or truth."

Here followed a passage in a periodical work, for which we now beg the reader to substitute the tirade in the speech of Sir James Scarlett.

"It can scarcely be necessary to remind our readers of the distinction which we have always recognised between the situation of a public teacher and that of a private one, or of the principle upon which we claimed the right of publishing the Lectures of Mr. ABERTHENY. The Lectures of private teachers, which we acknowledge to be private property, we have never published, as we shall presently show, without the CONSENT of the Lecturers; but the Lectures of public medical teachers, delivered within the walls of public hospitals, stand, as we have uniformly contended, upon a totally different footing. We maintained this point fearlessly and manfully against Mr. Abernethy in a court of equity, and the issue of the contest was, that the injunction which that gentleman obtained against the publication of his Lectures, was finally dissolved by the Lord Chancellor. So much for Mr. Abernethy's Lectures. Sir ASTLEY COOPER'S Lectures came within the principle on which we relied in our contest with Mr. Abernethy; but Sir Astley Cooper cannot, at any rate, be one of those who has been plundered of his literary property; for Sir Astley Cooper gave his express consent to the publication of his Lectures. The Lectures of Dr. BLUNDELL on Midwifery, though delivered within the walls of Guy's Hospital, we did not consider as public Lectures three years ago, because, at that time, no certificates of attendance on Courses of Midwifery were required by the Colleges or the Universities. We applied, therefore, for permission to publish them, which was not at that time conceded. Subsequently, certificates of attendance on Courses of Midwifery have been required, and Dr. Blundell has not only not withheld his consent from the publication of his Lectures in this Journal, but, as they were to go before the public, has added to their value by a revision of the proof-sheets. Dr. ARMSTRONG'S Lectures on the Theory and practice of Medicine were published in consequence of the intimation of one of his pupils that the Lecturer would not offer any objection. Dr. Armstrong did, however, after the appearance of the first Lecture, object to the principle of publishing private Lectures, in which objection we acquiesced; but, having expressed his opinion, he added, that he should leave the matter entirely to ourselves. We urged the ground of public utility—and as he found that the pupils were desirous of possessing his Lectures, he afterwards consented to their publication, and acknowledged their accuracy. Mr. ALCOCK'S Lectures on some Practical Points of Surgery, were published with his consent, and the proof sheets were revised by him. Mr. LAWRENCE'S Lectures on the Anatomy, Physiology, and Diseases of the Eye, were published with his consent, and the proof sheets were revised by him. Dr. CLUTTERBUCK'S Lectures on the Theory and Practice of Physic were published with his consent, and the proof sheets were also revised by him. Dr. SPURZHEIM'S Lectures on Phrenology, in like manner, appeared with the consent, and underwent the revision of the Lecturer. The Lectures of Mr. BRANDE on Chemistry, and those of Dr. HASLAM on the Intellectual Composition of Man, were also published with the express consent of the Lecturers. All these facts we have had the permission and authority of the several Lecturers to state, from the periods at which their respective Courses were completed, as distinctly as we now state them; but we have hitherto disdained to give

this conclusive answer to the calumnies of our enemies, and we have now, once for all, adopted this course, in order that such calumnies, if they be again repeated, may be as much contemned in all other quarters, as they have been uniformly contemned by ourselves. We may further state, that so far have we been from the imputed necessity of seeking to obtain Lectures by indirect or dishonourable means, that our difficulty, on the contrary, has been to deal with the numerous applications which have been made to us for the publication of Lectures, and to appease teachers, to whose urgent solicitations we have not deemed it expedient to yield."

We have alluded, in the outset of this article, to what we take to be the causes of Sir James Scarlett's signal failure in the late trial; these causes are, in our opinion, first, his well-known hatred of the Periodical Press; and, secondly, his personal feeling in respect to the plaintiff. His discretion seems to have been completely overcome by the joint operation of these two causes. Of the latter we shall say nothing, because it may be founded in sentiments which are not unamiable; but of the former we must beg leave to say a word or two, in much the same spirit, wherein we have commented on the learned gentleman's attempt to make a figure as a surgical critic. One of the main sources, we understand, of this learned person's hostility to the Periodical Press, is to be found in the fact of his having been sent to his grave before his time by the newspapers, and of his having perused the open censure, or, what was worse, the faint and equivocal praise, which his survivors had pronounced upon him. Many men have, in a serious or playful mood, composed their own epitaphs; but to no living man, perhaps, except Sir James Scarlett, has it been given to appreciate the terms in which his contemporaries have commented on his decease. Such a phenomenon is in the teeth of classical authority, as the learned gentleman may perhaps collect from the following passage:

> Χρη δ' ουποτ' ειπειν ουδεν' ολβιον βροτων,
> Πριν αν θανοντος την τελευταιαν ιδης,
> Ὁπως περασας ημεραν ηξει κατω.—EURIPID. ANDROM. 100.

which passage, being interpreted, meaneth, that you cannot speak safely to a lawyer's good or ill reputation, until the devil hath fairly laid hold of him.

But there is another cause which is said to have greatly contributed to exasperate Sir James Scarlett's hostility to the Press, to wit, his failure as a speaker and legislator in the House of Commons. Whether justly or unjustly we will not now stop to inquire, but certain it is, that the time was when "Lawyer Scarlett's Poor Bill" was a by-word for the scoffers. There was, and for ought we know, is, a certain Swedish physician named Struve, who proposed to cure all diseases by a process which he called the *Hungerkur*, that is to say, the cure by starvation. Whether justly or not, we will not stop to inquire, but certain it is, that one of the ablest political writers of the day, gave Sir James Scarlett the credit of having invented, as a remedy for the evils of pauperism, the very process which the Baron von Struve subsequently proposed as a panacea for all diseases. Week after week, Mr. Cobbett insisted that Lawyer Scarlett's Poor Bill was neither more nor less than a project to cure pauperism by starvation; and the consequence of these reiterated attacks upon the learned gentleman's legislative labours was, that the Bill, at length stank in the nostrils of the public, and dropped still-born from the Legislature. With the abandonment of this Bill, terminated, in effect, Sir James Scarlett's parliamentary importance; and the wounds which his pride received, on this occasion, have never, it is said, been so completely cicatrised, but that they are subject to an ichorous discharge, whenever an opportunity presents itself for venting his spleen against the Press. For our own parts, we laugh at the impotent virulence

with which the learned gentleman FAILED to inspire the jury with the malice which he entertained towards this Journal, as part of the Periodical Press. Sir James Scarlett took occasion, in the course of his speech, to express his opinion of our abilities; and, that we may not be wanting in a similar species of courtesy, we will take this opportunity of expressing our opinion of the abilities of Sir James Scarlett. We think him prodigiously over-rated, even as a lawyer; for the rest, we have seldom encountered a gentleman possessing the ordinary advantages of education, who seems to be so completely innocent of all extra-professional information. Once, and once only, the learned gentleman ventured to play the critic on a passage in "The Lancet;" but he did so in a half-guilty, apologetic tone, which might, if he had been less arrogant in other parts of his speech, have screened him from our animadversion. We allude to his observations on the phrase, "average *maximum* of time."—"I suppose," said Sir James, "that I shall be scarified for what I am going to say, by 'The Lancet,' but it seems to me, that the phrase 'average *maximum*' is unintelligible: an average is a mean; now, I have heard of a mean, and I have heard of a *maximum;* but I never yet heard of a mean *maximum.*" You judged rightly, Sir James. We must subject you to a little gentle scarification; and we would moreover suggest to you, that there are more things in this world than you have ever dreamed of in *your* philosophy. We have beaten you on a point of law, and we must proceed to set you right on a point of mathematics. Your mistake arose from your not knowing that *maxima*, similar in kind, but differing as to absolute quantity, might be made the subject of comparison, and that, consequently, one might be a mean proportional between others. A square is the greatest quadrilateral rectilineal figure that can be inscribed in a circle, but the magnitude of the square depends on the diameter of the circle, and different squares or quadrilateral *maxima* under the similar condition of inscription in different circles may be compared with each other. But lest this should be unintelligible to you, let us put the case of an average *maximum* taken upon the highest tides at London Bridge in a given number of years. We use the didactic method, Sir James, on this occasion, because, although you offered yourself as a candidate for the representation of the University of Cambridge, on the score of your passion for *sour milk*, we do not find any evidence of your ever having distinguished yourself, either as a classic or a mathematician, in the records of University honours. If you are indeed, as we are given to understand, the greatest advocate at the English bar, the average *maximum* of talent at that bar must be marvellously small.

As a specimen of the tact, gentlemanly taste, and sound judgment, which Sir James Scarlett displayed in addressing a jury of *English Merchants*, we beg to direct the reader's especial attention to the following felicitous distinction between the vulgar, common-place notions of honesty which govern the sordid transactions of commercial men, and that dignified contempt for the *siller*, that high-minded scorn for every thing in the shape of a *fee*, which is well known to characterise the practice of the members of the legal profession.

"Gentlemen," continued the learned Counsel, "there is a certain privilege which belongs to this high profession,—it is something that is better felt than described; and the man that does not feel it, will not be capable of appreciating the argument I address to you. In the ordinary traffic of life, called commerce, there is a course of plain dealing, or simple integrity, that marks the line between honesty and the mere appearance of it; and the meaning of it is very well understood by every man. But in the practice of a liberal profession there is a certain feeling of honour which becomes a gentleman, and which a gentleman only can feel; which renders it not sordid, but

which gives it a character which belongs to such a profession—a certain dignity—a certain pride, which makes a man feel that profit is a secondary object to him—that fame and reputation, and means of utility, are its greatest recommendations. Either in the profession of the law, or the profession equally honourable, and, perhaps, equally useful, or more so, that principle is debased, that principle is destroyed, if a man finds that it depends upon whether he makes concessions or no to the editor of such a publication as 'The Lancet.'"

We take leave of Sir James Scarlett for this week; and we forbear making any further remarks on the evidence in the late important trial, until we shall be enabled to lay an authentic report before our readers; for which purpose short-hand writers have been expressly employed. The account given in this week's number is taken from the newspapers. We cannot conclude these observations, without expressing our humble but heart-felt admiration of the patience, suavity, and the undeviating impartiality of the learned Judge who tried the cause; and our own deep sense of gratitude, for the placid endurance of involuntary technical errors, and the unwearied attention which we received at his hands.

No. II.

HAVING, for the present, disposed of the advocate, we deem it an act of justice to Mr. Bransby Cooper to insert the Prefatory Remarks which *he* has published in a report of the trial, purporting to have been taken from the short-hand notes of Mr. Gurney, the short-hand writer to both houses of Parliament; and, that *justice* may be done to all parties, it is right to add that Mr. Gurney was not present at the trial.

With regard to the passage in which Mr. Bransby Cooper announces that "he entertained, and had without reserve expressed, *opinions* unfavourable of the science, the candour, and the moral rectitude of the publication called 'The Lancet,'" we forbear making any comment on Mr. Bransby Cooper's capability of forming an opinion on the science of any publication, and shall merely tell him a story. A young gentleman, of about his own intellectual size, having received a little wholesome chastisement from Mr. Porson, the Greek Professor, ventured to address that eminent scholar in the following terms: "Sir, my *opinion* of your abilities is perfectly contemptible." "Young gentleman," replied the Professor, "I never heard of an *opinion* of yours which was *not* perfectly contemptible."

"PREFATORY REMARKS.

(BY B. COOPER, ESQ.)

"The novel circumstance, in the trial of an action for libel, of the defendant commencing with his case, and thereby obtaining the advantage of a first impression, makes it necessary to request the attention of the reader to a short statement, before he enters upon a perusal of the following pages.

"Mr. Bransby Cooper entertained, and had, without reserve, expressed opinions very unfavourable of the science, the candour, and the moral rectitude of the publication called 'The Lancet.' He had reason to believe that an individual, who possessed the privilege of attending at Guy's Hospital, had used that privilege for the purpose of making communications to the author of that

work. He was not however aware, before the fact was disclosed at the trial, that such communications were made the subject of pecuniary traffic. Upon more than one occasion he had noticed the conduct of that individual in terms of marked disapprobation, and had thereby, as he was informed, given rise to very vindictive feelings, denoted by a declaration, which it will be seen in the following pages that the individual alluded to would not deny upon his oath, that 'he would watch some opportunity to make Mr. Cooper repent.' That opportunity was supposed to present itself upon occasion of a very peculiar and difficult case of lithotomy, in which Mr. Cooper was called on to operate at Guy's Hospital. The design to publish the case was first announced by an offensive notice in 'The Lancet.' In the following number the promised report appeared, cast into something of a dramatic form, and combined with sundry touches of drollery and ridicule, very singular, considering the nature of the subject; but consistent enough with the motives of the reporter. The article in 'The Lancet,' to invite the attention of the public, was announced on the day of its publication by two of the morning papers. The design of this report was, to insinuate that Mr. Cooper had failed to reach the bladder of the patient in his first attempt with the knife; that he consequently failed in his first attempt to reach it with the forceps; that he lost his presence of mind; that his second attempt with both knife and forceps, was equally unsuccessful; that he then used the cutting gorget without reaching the bladder; that the knife, the forceps, or the gorget, and probably all of them, had been thrust between the bladder and the rectum; and, finally, that the parts, upon examination after death, exhibited appearances which confirmed these insinuations. Had they been true, Mr. Cooper must indeed have been deficient in the most ordinary degree of skill and science in his profession; a degree of skill and science which no surgeon, educated at a considerable hospital, can fail to possess, unless there be some defect in his intellect, or his senses. But the insinuations were, one and all, entirely false and groundless. A contradiction of them was published, unknown to Mr. Cooper, by a considerable number of the pupils, who had been present at the operation, and were indignant at the misrepresentation. This gave occasion to a second publication in 'The Lancet,' in which the death of the patient was, in distinct terms, ascribed to the want of skill in the operator. Moreover, he was declared to be generally incompetent in his profession, and unworthy of his station, as Surgeon at Guy's Hospital; his appointment to which, was charged to be owing to his connexion with Sir Astley Cooper, and a corrupt influence exercised in his favour amongst the Governors of that institution.

"These libels form the ground of the action which Mr. Cooper thought it due to his reputation and his honour to bring against the editor of 'The Lancet.' The defendant, by his pleas, admitted the publication, and did not deny the motives alleged for it, but undertook to prove the truth of what he had asserted. His failure, and the verdict of the jury for the plaintiff, are known. But the garbled manner in which the evidence has found its way to the public, and the impression which may possibly be made by the singular accident of the defendant's case being first published, without the least intimation, much less explanation of the plaintiff's, induces him to lay before the reader a full account of the trial, taken in short-hand by Mr. Gurney. This is the only method left, imperfect as it is, of imparting to the reader something of that full conviction and lively indignation which, with the exception of the defendant, and a few of his adherents, animated the whole of a most intelligent audience, who heard the trial, and who confidently expected much larger damages than the jury, after the very proper exhortation of the judge to moderation

and temperance, thought it right to give. Mr. Cooper was always indifferent to any amount of damages beyond what might be sufficient to mark the clear opinion of the jury. He is well satisfied with their verdict. They consisted of ten special and two common jurymen. He has nothing further to say upon that subject, except that he would have preferred a full special jury; not because he imagined that any honest man, who heard the evidence, could entertain a doubt of the malice or the falsehood of the libels, but because he was aware that the character and system of the defendant's work made it less likely to find favourers and supporters in proportion to the science, the taste, and the refinement of those who might sit in judgment upon the particular parts of it in question. To members of his own profession, or to persons of general science, he need not appeal: they well know how to estimate the skill and competency of the witnesses who were brought to speak against him, as well as their veracity and integrity. But he trusts, and believes, that every reader who bestows his candid attention upon the following pages, will be fully satisfied that every one of the insinuations and assertions to his prejudice, contained in these libels, has been fully, completely, and satisfactorily refuted, not only by the evidence adduced on his part, but, in a great measure, by the most credible witnesses for the Defendant.

"Finally, he thinks it must also appear to those who will take the trouble to weigh the whole case, with attention to all its parts, that, to accomplish his ruin, was the object of a conspiracy, in which ignorance and malice took the lead, and were followed by fraud and falsehood. To the members of his own profession, who voluntarily and cheerfully came to his aid, he cannot adequately express his grateful sense of their conduct. He feels a conscious pride and security from injury, not only in the testimony of those distinguished and honourable persons who were called as witnesses on his behalf, but in the zeal and kindness of many others, well known and highly esteemed by the public, who did him the favour to attend, and who would have been requested to give their evidence, but for the lateness of the hour, and the opinion of his counsel that it was not expedient to fatigue the Court with further examinations. He can never forget what he owes to them, or that the best manner of discharging the obligation is to exert his efforts with theirs to elevate and adorn their common profession, not only by the improvement of art and the cultivation of science, but by the love of truth, and the practice of liberality and candour."

No. III.

SINCE the trial Mr. Bransby Cooper has published his own report of the operation, and an account of the *post-mortem* examination, purporting to be taken from the notes of Dr. Hodgkins. We insert this account, and, when the reader shall have perused it, we beg him to compare it with the *post-mortem* examination published in "The Lancet," and then turn to the evidence which we extracted from Dr. Hodgkin, touching his belief that *our* report was taken from *his own notes*. If our account of the *post-mortem* examination were actionable, what would Mr. Bransby Cooper's account of the *post-mortem* examination be, if any other man than himself were the publisher of it? No surgeon who reads Mr. Cooper's account can doubt why it was not published *before* the trial. The manner in which Mr. Bransby Cooper attempted to explain why he did not publish a report immediately after the

operation will be seen in the following extract from an article in "The Lancet," of the 12th of April. We admitted to the plaintiff's attorney the publication of this article, but Sir James Scarlett did not afford the jury an opportunity of estimating the extent of his client's acquaintance with his mother tongue, by making the article a part of the alleged libel.

(*From* THE LANCET *of April 12th.*)

Mr. Bransby Cooper has published a letter which certainly is not calculated to diminish the impression that he is indebted for the situation which he holds at Guy's Hospital, rather to the relation in which he stands to Sir Astley Cooper, than to his intellectual pre-eminence. The letter consists of only a single sentence, but that sentence is *nonsense*. Here it is.

SIR,—In consequence of the foul misrepresentation of my late case of tithotomy, at Guy's Hospital, it had been my intention, originally, to transmit to you the details of that operation for your columns; but as I have since been strongly recommended by my friends to seek redress for this injury *elsewhere*, I forbear to anticipate any part of my own case until the full particulars shall be made public in a court of justice.

I am, Sir, your obedient Servant,

April 1, 1828. BRANSBY B. COOPER.

The well-wishers of Mr. Bransby Cooper will probably regret that he did not submit his sentence to a little friendly revision, before rashly committing it to the press; for it cannot be denied that this gentleman's diction savours strongly of the mental confusion, which he seems to have betrayed during the late melancholy exhibition at Guy's Hospital. The first moiety of Mr. Bransby Cooper's sentence is somewhat perplexing, since the plusquam-perfect propriety of its grammatical construction seems to intimate that he was moved by the alleged misrepresentation of his recent case of lithotomy, to transmit the details of it to Roderick Macleod, at a period *antecedent* to the performance of the operation. But the concluding moiety of Mr. Bransby Cooper's sentence, casts the merit of the first portion of it completely into the shade. Mr. Bransby Cooper, it seems, forbears to ANTICIPATE any part of his own case, UNTIL—UNTIL what period, gentle reader? Why, until the full particulars shall be made public in a court of justice. Argal, Mr. Bransby Cooper will be ready to ANTICIPATE his case, when the public are in possession of the *full particulars*. Of a truth, looking to the brevity of this epistle, and seeing that brevity is the soul of wit, it is, perhaps, as witty a specimen of composition, as ever emanated from the intellect of a *pure* hospital surgeon. It is redolent of the spirit which characterises the productions of the *Bat* tribe; it is inspired by the soul and genius of *Dogberry:*

Dogberry. Bring my pen and inkhorn.

Verges. We must do it wisely.

Dogberry. We will spare for no wit, I warrant you; here 's *that* shall drive them to a *non-com.*

Mr. Bransby Cooper will not *anticipate* his case, *until the full particulars of it shall be made public in a court of justice!* Truly, a most cautious resolution! and when the full particulars of it shall be made public in a court of justice, he is determined to commence his *anticipations*. And the writer of this epistle, seeing that he is a *pure* hospital surgeon, we must, perforce, believe to be one of the heads and ornaments of his profession! Doubt this, YE GENERAL PRACTITIONERS, and you will be held up to public scorn, as "the chaff and bran" of your profession! Doubt this, ye general practitioners, and your incredulity will be stigmatized as presumptuous contumacy towards the

Traverses, the Stanleys, and the Simons, of the age! Doubt this, ye despised and degraded members of a "subordinate department of the profession," and you will incur the awful resentment of that galaxy of surgical genius, whose paths are paths of purity, and whose perfections it is treason to your liege masters to call in question!

Such were our comments at the time. The trial has taken place; and Mr. Bransby Cooper, now *that the* FULL PARTICULARS are before the public, has, in pursuance of his promise, *anticipated* his case. The following is his *anticipation*, as regards the *post-mortem* examination. The reader will do well to bear in mind, in perusing this account, that Mr. Callaway and Mr. Key both swore they saw nothing in the state of the parts which would lead them to suppose that the operation *had not been scientifically performed.*

"*Examination of Body* 60 *Hours after Death.—(From the Notes of Dr. Hodgkin.)*—The peritoneum, at the lower part of the abdomen, as well as that portion which lines the parietes, and that covering the intestines, was minutely injected. In the pelvis there was some sero-sanguineous effusion, very slightly puriform, and unmixed with lymph, or flocculi. BEHIND THE PERITONEUM, *in the posterior part* of the LEFT ILIAC REGION, there was some ECCHYMOSIS. The cellular membrane behind the peritoneum in the pelvis, was extremely lacerable, readily breaking down under the finger, and scarcely requiring the use of the knife for the removal, except under the pubes. There was a *free division* of the *prostate*, and a CLEAN CUT into the *bladder*, the mucous membrane of which was generally healthy. Immediately BEHIND the MEATUS URINARIUS there was a small TONGUE-SHAPED BODY, which on the opening of the bladder, and when obscured by coagula, *was considered* to be the *third lobe* of the *prostate;* but a more careful examination proved it to be a SMALL FLAP, *composed of a portion* of BLADDER and PROSTATE, and which had been formed by ANOTHER INCISION communicating with the first, about an inch in length, and *a third of an inch behind the opening of the meatus.* There were a few spots of *the ecchymosis,* and abrasion comprehended in a space of about the size of a shilling around the orifice of the meatus. The *edges* of the *incision, from the external opening to the bladder*, were RAGGED and intermixed with adherent coagula of blood, a state which was *unavoidably produced* by the repeated introduction of the *forceps* and *other instruments* which were had recourse to in the attempt to remove the stone. *

"In the preparation A PASSAGE EXISTS at the SIDE OF THE BLADDER: this was not NOTICED by Dr. Hodgkin till after it had been in the hands of the reporter of 'The Lancet;' and from the extremely lacerable state of the part, it might easily have been formed after its removal from the body. That it was either formed then, or in the act of removing them, is an *idea* which the absence of coagula *tends strongly* to confirm.

"Besides the injection of the peritoneal coat of the small intestines, the internal membrane was of a diffused red. The rectum was perfectly sound and healthy, with the exception of a very slight appearance of piles. The kidneys were of moderate size, soft and flabby, and in an advanced stage of the *light mottling deposit* described by Dr. Bright."

---

* Query—Did this passage lead to the posterior part of the left "iliac region," where there was "SOME ECCHYMOSIS?". T. W.

No. IV.

THE extraordinary delay in extracting the stone was attributed it will be recollected, to two causes,—the situation of the stone with respect to the pubes, and the situation of the stone with respect to the contracted folds of the bladder. The following remarks of Lord Tenterden on the first of these supposed causes of difficulty were, no doubt, calculated to make a powerful impression on the minds of the jury:—

"Mr. Callaway apprehended the stone was above the pubes, and so Mr. Partridge tells you, though the defendant says that cannot be. So says Mr. Callaway, that it was lodged above the pubes."

Sir James Scarlett, in his address to the jury, taunted us with our ignorance on this point. The error of the advocate we can well excuse, when we call to mind the quarter from which he derived his surgical knowledge. Let him, however, read the following extracts, the first of which is from a work of Mr. Joseph Henry Green, one of the plaintiff's witnesses, who swore that he saw no reason for doubting that the operation was scientifically performed.

"When EMPTY, the fundus of the bladder DOES NOT RISE ABOVE THE LEVEL OF THE OSSA PUBIS; but when DISTENDED with URINE, it rises up within the abdomen."—JOSEPH HENRY GREEN'S *Dissector's Manuel, by South*, p. 271; last edition, published in 1828.

"When the *bladder* CONTRACTS and *sinks* BEHIND the *os pubis*," &c. &c.—COOPER'S *Surgical Dictionary*, fifth edition, p. 196.

"The *irritation* of a *stone* often causes such a *thickened* and CONTRACTED state of the *bladder*, that this viscus will *not* admit of being DISTENDED *so as to* RISE ABOVE THE PUBES."—*Ibid.*

"The bladder is lodged, in the adult, in the excavation of the pelvis, immediately BEHIND the pubes;" and, "when there is AN ACCUMULATION of URINE, it is DISTENDED to such a degree as TO RISE ABOVE THE SYMPHYSIS OF THE PUBES."—CLOQUET'S *Human Anatomy, by Dr Knox, of Edinburgh*, p. 791; just published.

"The *Bladder of Urine* is a large musculo-membranous sac, situated in the pelvis, in the bottom of the hypogastric region. When COMPLETELY EMPTY, it is CONTRACTED into a small size, and occupies the UNDER and FORE PART of the pelvis; when MODERATELY DISTENDED *it is still contained in that cavity;* but when MUCH DILATED, IT RISES ABOVE THE OSSA PUBIS."—FYFE'S *Anatomy*, sixth edition, Edinburgh, p. 257.

From these extracts it is sufficiently evident that *no part* of the bladder, unless *much distended*, can be *above* the pubes, when the body is in the erect position; and consequently, that the whole of the bladder, when contracted, must be *under* the pubes, the patient being placed on his back, as in the operation for lithotomy. There can be no doubt, therefore, that if the bladder be *contracted*, it must be *below* the pubes, not only when the body is in the erect

position, but when it is in the horizontal position. It follows, that as the stone is within the bladder, if the bladder be contracted, the stone must also be below the pubes. The only question that remains therefore is, whether in the operation performed by Mr. Bransby Cooper, the bladder was, or was not contracted. On this point, let the reader attend to the evidence of Sir Astley Cooper:—

"The bladder, WHEN IT CONTRACTED after the urine had been evacuated, had got the stone between its folds behind the pubes, and when my nephew passed the forceps into the bladder, he passed them beyond the stone. From the delay the man became greatly exhausted, and then the contractions of the bladder relaxed, the stone dropped from its hold, and then my nephew laid hold of it."

Thus from the testimony of Sir Astley Cooper himself, it appears that the *contracted* state of the bladder was the cause of the difficulty; and from the extracts previously made, it is evident that the contracted bladder must be below the pubes. It is evident also from the testimony of the worthy Baronet, that in his opinion, as the folds of the bladder were sufficient to envelope and conceal the stone, the contraction must have been by no means a slight one. We say nothing here of the apparently indiscriminate introduction of instruments in the course of the operation, but merely take the case on the showing of the operator's uncle. Here let us pause a moment. The reader has now before him *the two supposed* DIFFICULTIES which, according to the testimony of the plaintiff's witnesses themselves, occasioned the extraordinary delay. Of the first of these supposed difficulties, namely, the position of the stone with reference to the pubes, we have shown that, if the bladder were contracted, it could not under ANY POSSIBLE CIRCUMSTANCES have existed. The reader will also observe, that Sir Astley Cooper accounted for the difficulty by stating, in the most unequivocal manner, that the patient had made water just before the operation, and that consequently the bladder WAS CONTRACTED. Hence, in the course of our cross-examination of the worthy Baronet, we put the following questions:—

"Are you not aware, that it is the practice of surgeons in Paris and Edinburgh, after they have tried to extract the stone, in vain, for five or six minutes, to send the patient to bed? I DO NOT KNOW OF THAT PRACTICE: I have studied at Edinburgh, and been at Paris repeatedly, and seen operations there, and never saw the circumstance occur, NOR DID I EVER HEAR OF IT!!!"

When we shall have laid before our readers the documents, which we are about to lay before them, they will perhaps be of opinion that we might well have stopped *here*. Before doing so, however, we shall allow the worthy Baronet to expose himself a little further:—

"If the patient were removed and placed in his bed, and if the stone were allowed to remain, in such a case, what inconvenience would arise? Only what you would not like—two operations instead of one.

"Would it be more than introducing the forceps a second time? O yes; O yes; God bless me, yes: I assure you it is no entertaining thing to have the urethra opened," &c., &c., &c.

The case is now brought within a narrow compass. We have reduced it to one difficulty, namely, the difficulty arising from a CONTRACTED bladder. What should have been the treatment in this case? By way of comment on the part of the evidence we have just cited—making that comment, we blush for the state of professional knowledge among hospital surgeons, and for the ignorance of that person who has for thirty years pretended to instruct the rising generation of surgeons in this country—we insert the following extracts from Mr. Carpue's interesting and instructive work on lithotomy, in which he gives an ample account of the operation "AT TWICE" first performed by Franco, who lived and wrote in the sixteenth century, and adopted *down to the present period* by the French and Scotch surgeons. We also insert a letter from Mr. Lizars, of Edinburgh, on this subject, addressed to the editor of a late Quarterly Journal.

Franco's work was published about the middle of the SIXTEENTH CENTURY; Mr. Carpue's work was published in the year 1819; Mr. Lizar's letter in November 1826, and Sir Astley Cooper swore that he had never *heard* of the operation *at twice* in December 1828!!!

"*Operation en deux Tems.*

"If we consider Franco's account of his invention of what is called the operation *en deux tems*, we see, that from great experience, he (Franco) was progressively led from one mode of operation to another. The stone cannot be extracted (although the lateral operation has been performed) without risking the life of the patient. Franco, foreseeing the strength of the patient will not bear the continued irritation of endeavouring to extract the stone, places him in bed, uses tepid applications, till the irritation, and consequent inflammation, have subsided. This experiment succeeds; he finds that he can extract the stone, and that his patient recovers.

"He says, that he has many successful cases, and claims this as an invention, and gives an account of it in his thirty-third chapter."

"In this operation the incision is made at one period, and the extraction of the stone at a subsequent one.

"Franco's thirty-third chapter is thus entitled:—'Autre façon de tirer la pierre plus propre que les autres, d'autant qu'elle est sans grand péril et douleur; inventée par l'auteur.'

"This is usually called the operation *en deux tems*, or at twice. Franco finds, from experience, that there are cases where the patient has suffered much from the violence of the operation, and where it would be extremely hazardous to proceed, inasmuch as he says he has known patients die on the table from exhaustion. I remember a case where the operator was three-quarters of an hour in extracting the stone; the child complained of being sleepy, and in five minutes from being taken from the table he was dead.

"Franco says, that in cases of this kind the operator should desist; the patient should be placed in bed, and then, with his usual caution, he says, (not daring totally to decry the use of *tents*,) 'you may employ them if you choose, but I do not use them.'

"After a few days, when the fever has abated, he has often found the stone so situated, that he could extract it by the usual means. If it is not seen at the mouth of the wound, he advises the surgeon to pass his finger into the

rectum, and to press the abdomen; having by these means brought the stone to the neck of the bladder, he advises that it be extracted with forceps. If the stone is so large that it cannot be extracted by the neck of the bladder without cutting the body, (which thing is much to be dreaded, for that inflammation, and often death ensues, and that the wound will not unite,) or if the stone is too large to be extracted, he advises it to be broken with strong forceps of his own invention; and that if the patient has not strength to bear the irritation, it is better to WAIT for a DAY or TWO; and that in several cases he has succeeded by this plan.

"The 29th of May, 1694, I was called to a consultation with Messrs. Pajot and Fontaine, in the case of M. Chanvelin, seventy-five years of age. He was exceedingly ill with fever and flux. He had also a stone in the bladder, which was of a moderate size. There was great disease of the bladder, and a suppression of urine; his head was so much affected, that he was totally insensible. We agreed that it was impossible the Abbé could exist long in this deplorable state. I drew off the water; he was now so much recovered, as to be able to receive the sacrament. It was then thought advisable to make an opening in the perineum, as the bladder had lost all its powers of contraction, in consequence of the irritation occasioned by the passing of the catheter. In seventeen days, his health was considerably better, and the wound suppurated. The EIGHTEENTH *I extracted the stone;* there was a considerable discharge from the internal parts of the bladder. M. Chanvelin *regained his health and strength,* the bladder and wounds cicatrized; he received a PERFECT CURE, and lived till the age of ninety. A few days, after Callot was *equally successful* in the case of M. Maurel, *whose exhausted state* WOULD NOT ALLOW HIM TO EXTRACT THE STONE ON THE DAY OF THE OPERATION. On the 17th of January, 1791, Callot performed an operation on Mr. Usson, from whom he extracted thirty-five stones; the TENTH DAY of the operation the parts had digested, and he extracted thirty-six stones of the size of haricot-beans; the wound was in a very good state, and would have cicatrized, but fearing that there might be other stones, and conceiving it necessary to inject the bladder, HE KEPT IT OPEN *by means of a small canula;* he continued in good health for five years, but at different periods ten other stones were extracted.' 'Callot,' says M. Deschamps, in his *Histoire de la Taille,* 'pursued this practice, in a patient of extreme weakness, aged sixty-two; the hæmorrhage was very considerable, and lasted, at different periods, for seven days: THE FIFTEENTH DAY *he withdrew four stones,* and the SIXTEENTH *he withdrew the others with* THE GREATEST FACILITY, altogether amounting to thirteen; on the fortieth day *the patient was well.* Saviard operated in a case, where he extracted AT DIFFERENT INTERVALS from thirty-five to forty stones; he was obliged to place a canula in the wound: in two years the patient was *perfectly well.* In 1693, Tolet performed an operation on a gentleman aged thirty; the stone escaping from the forceps several times, *Tolet thought it imprudent to attempt the extraction at this period,* the patient being so much exhausted; on the ELEVENTH day he extracted a stone the size of a TENNIS BALL.'

"M. Deschamps gives a chapter on this method of operation, and says, that 'in the autumn of 1725, an adult was operated on at the hospital of La Charité; there was a considerable hæmorrhage; the stone was found with great difficulty; during the extraction the hæmorrhage was stopped, by the pressure of the forceps which contained the stone; however, the patient died on the fourth day from the operation.' M. Deschamps remarks, that *if proper means had been employed* before the extraction of the stone to stop the hæmorrhage,

there would have been a probability of saving the life of this patient; and is also of opinion, that the operation *en deux tems* is *advisable* in a variety of cases. The truth of this observation is evident, as may be seen in the preceding and in the following cases.

"Professor Thompson, of Edinburgh, published a case in the year 1710, where, no doubt, *by his* PRUDENCE *and* FORBEARANCE, he saved the life of a patient. Thompson says, that after repeated fruitless endeavours to lay hold of the stone with the forceps, the patient was considerably exhausted; it appeared expedient to DESIST FOR THE PRESENT, *and to put him to bed.* On the TENTH day from the operation, a stone, that had a rough surface, and was nearly an inch and a half in length, and the same in breadth, was extracted: *the patient recovered.* The operation was performed in 1708, and in 1710 (Robert Walker) was in perfect health."

The Letter of MR. LIZARS, *addressed to the Editor of a late Quarterly Journal.*

"*The practical* RULE, *of not attempting beyond* A FEW MINUTES, *to extract a calculus,* is laid down in most distinct terms by CELSUS, by Albucasis, by Franco, by Fabricius Hildanus, and other authorities,—Covillard, Obs. Introchirurgique, observ. iv.; Colot, Traité de l'Opération de la Taille, p. 178, 182; Saviard, Nouveau Recueil d'Observations Chirurgicales, observ. cviii., also observ. xliii.; Tolet, Traité de la Lithotomie, chap. xvii.; Louis, Journal de Médecine, tom. lxxxi.; Haller, Bibliotheca Chir., tom. ii.; Magnetus, Bibliotheca Chir., tom. i.; Heister's System of Surgery, part ii., sect. 5, chap. 141; Camper, London Medical Journal, vol. x., part 2, p. 182, 1789; Percy, Journal de Médecine, tome lxxix.; Deschamps, Traité de l'Opération de la Taille, tome iv.

"That the operation 'en deux tems' (AT TWICE) should be always kept in view by the operator, *I have invariably stated to my pupils,* for in no other way can we, in many instances, *save the lives of our patients.* I conceive that we ought never to perform the 'opération préméditée en deux tems,' but that we should perform the 'operation nécessitée en deux tems,' or combine both. We should, therefore, be prepared with a perfect knowledge of both, and commence with the premeditated intention of LEAVING THE CALCULUS IN CASE OF NECESSITY.

"I shall now briefly mention, that, within these few weeks past, I have been again compelled to perform lithotomy 'en deux tems.' While on a professional visit to Brechin in the summer, (1826), I was requested (on passing through Montrose) by Dr. Crab, to see a man who had been labouring under calculus for about six years, and who had been previously sounded by the doctor so carefully, that he was confident of the presence of a calculus, and, therefore, requested me to operate (the Doctor himself having for some years past resigned the use of the knife). At the recommendation of the other medical gentlemen of Montrose, the patient was removed to the hospital, for the benefit of better light during the operation, and of superior accommodation for the man. He was a tall, large-boned person, somewhat emaciated, and upwards of sixty years of age. His bowels were opened by laxative enemata, or rather, the rectum was emptied by laxative enemata, and soon afterwards he was carried into the operating theatre, when, after he was secured in the ordinary way, I filled the urinary bladder with tepid water by means of a catheter, which instrument, both before the introduction of the water, and afterwards, at once pointed out the presence of a stone. The catheter intended for this purpose should have an

...y be termed the handle, in ...n glyster-bag and pipe. The ca... ...ary bladder of the patient, with the pig's ...ién the tepid water ought to be poured into the ... tied and gently squeezed, so as to distend mate... ...er of the patient. After sufficient water has been in... be judged of only by the feelings of the patient, the catheter ... ...rawn, and a tape tied round the penis, a little below the glans. ... ...ethod, when the irrita...bility of the bladder of the patient does not prevent it, is superior to that of tying the penis some hours before operating, in order to accumulate the urine.

"The staff was now inserted in the urethra onwards to the bladder, and given to Dr. Campbell, one of the surgeons of the hospital, who kindly assisted me. I then made a long incision through the skin and cellular substance, from the root of the scrotum, between the raphe of the perineum, and the ramus of the ischium downwards, or coccygead beyond the anus, and over the fibres of the gluteus maximus muscle. The second incision was more limited superiorly or pubic, in order to avoid wounding the accelerator urinæ and erector penis muscles, but equally extensive downwards or coccygead, so as to divide some of the fibres of the gluteus maximus muscle: in this second incision, the transversus perinæi muscle was divided. One or two scratches with the scalpel, held in the same manner as when making the first incision, (for there appears no necessity for turning the edge of the knife upwards or pubic to the symphysis pubis, as directed by lithotomists,) easily enabled me to arrive at the membranous part of the urethra, and to divide the levator ani muscle from this downwards to the bottom or coccygeal aspect of the wound, carefully avoiding the rectum. The point of the scalpel was then entered into the groove of the staff, (the latter of which was now held close up to the symphysis pubis, and at right angles to the axis of the brim of the pelvis,) and carried onwards so as to cut the membranous portion of the urethra, the prostate gland, and a portion of the urinary bladder, lateralizing the knife so as to pass between the termination of the ureter and vesiculæ seminales, and depressing the rectum with the middle finger of the left hand to prevent it being wounded. The tepid water and urine flowing copiously from the wound; I inserted my left fore-finger into the bladder, laid aside the scalpel, and conducted the forceps into the bladder, and then withdrew the staff. I at once felt the calculus distinctly at the fundus of the bladder with my left fore-finger, and easily touched it with the forceps in their shut state, but whenever I opened them over the calculus so as to seize hold of it, I found that the blades grasped the bladder which retained the calculus in situ. I then tried a scoop, but with equal want of success. After several fruitless attempts for *five minutes*, I resigned the forceps to Dr. Campbell, and after he had persevered for *three minutes longer*, I requested him TO DESIST. *I next untied the patient, put him to bed*, and desired him to have an opiate. I now begged the medical gentlemen present to return to the operating theatre, where I explained the nature of the 'opération en deux tems,' and stated, that when all action had subsided, and suppuration was fairly established, the urinary bladder would offer no resistance, and that probably the calculus would be in the mouth of the wound, or at all events *that it would be* EASILY *reached and extracted.*

"The operation was performed at twelve o'clock, on Thursday, the fifth of October, 1826, and as I had to proceed onwards immediately to Edinburgh, I begged that the patient should be bled whenever re-action had taken place, being of opinion, that after lithotomy, as after the operation of trepanning, vene-

[illegible] removed on Sunday or [illegible]
On Monday the ninth, a calcu[illegible]
THREE OUNCES AND A QUARTER, was [illegible]
being previously inserted in the urinary bladder.
received the other day, *the patient was walking* [illegible]
along the urethra, and the wound nearly healed.

"I am decidedly of opinion, that *had I persevered longer in* [illegible] *extract the calculus at the time of the operation,* I would have induc[illegible] a degree of inflammatory action, as, in all probability, *would have destroyed my patient.*

"*Edinburgh, Nov.* 1826. JOHN LIZARS."

WE did intend to add some further remarks in this place, on the evidence given by the plaintiff's witnesses, but we feel that after the extracts just cited, all further comment would be superfluous. We have shown that a stone cannot be situated above the pubes in a contracted bladder. A contracted bladder, says Sir ASTLEY COOPER, was the cause of the difficulty; consequently the stone, even according to Sir ASTLEY COOPER's explanation, could not be lodged above the pubes. But, says the worthy Baronet, the man made water just before the operation, the bladder fell into folds, and the contracted state of the bladder rendered it impossible to extract the stone until the patient became considerably exhausted, and the folds of the bladder relaxed. Admitting this explanation, what should have been the treatment? The foregoing extracts speak for themselves. Either Sir Astley *was* ignorant of the operation *en deux tems*, or he was not. He swore that he had never heard of such an operation, and if we believe in the possibility of Sir Astley's ignorance, what is the inference? Why that the unfortunate patient was kept FORTY-FIVE minutes longer upon the table than he would have been in the hands of Mr. LIZARS, or of any other scientific surgeon. Nor is this all; for the destruction of the patient was nearly certain under the one mode of treatment, and the patient's life would, in all probability, have been saved under the other. And let the reader bear in mind, that during those FORTY-FIVE minutes of protracted, and *unnecessarily* protracted, suffering, the patient was bound hand and foot upon the table, in the manner represented in the frontispiece of this publication, and that during the whole of this time, he was writhing under the agony occasioned by the insertion of one or other of the instruments there represented. What will the public, what will the jury, what will the judge who tried the cause think, when they read of the operation *en deux tems*? When we asked Sir ASTLEY COOPER what inconvenience would have arisen if the patient had been removed from the table, at the end of *five minutes*, and placed in bed, he flippantly answered, "Just what you would not like—two operations instead of one." But what was the alternative to which the unfortunate patient was consigned—FORTY-FIVE MINUTES of unnecessary suffering, and almost inevitable DEATH. Who would not prefer, two operations, to DEATH?

FINIS.

London:—Mills, Jowett, and Mills, Bolt-court, Fleet-street.

Wakley (T.)

pla
ren
On
THI
bei
rec
alo
"
ext
a d
my
"

WE
give
all f
be s
says
ston
abov
befo
blad
cons
expl
spea
tems
if w
Why
the
othe
was
woul
bear
cessa
table
that
by th
will
think
ASTI
been
he fli
of on
consi
evita

Gate Street

Position of the Patient, and the manner in which he is bound. in the operation of Lithotomy.

W. Day lithog. 17, Gate Street.

SEP 23 1942